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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 115.

THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY (AS REORGANIZED), APPELLANTS,

vs.

ROBERT K. DOW AND WATSON MATTHEWS, TRUSTEES.

FILED OCTOBER 16, 1884.

No. 164.

ROBERT K. DOW AND WATSON MATTHEWS, TRUSTEES, APPELLANTS,

vs.

THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, (AS REORGANIZED).

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APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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1 Be it remembered that on the 26th day of June, 1883, came into the office of the clerk of the circuit court for the eastern district of Arkansas R. K. Dow and Watson Matthews, by U. M. and G. B. Rose, Esqs., their solicitors, and filed therein their bill of complaint against the Memphis and Little Rock Railroad Company as reorganized, which bill of complaint is as follows:

In the United States Circuit Court for the Eastern District of Arkansas. In Equity.

R. K. Dow and Watson Matthews, Plaintiffs,

v.

The Memphis and Little Rock Railroad Company, as Reorganized, Defendant.

To the judges of said court in chancery sitting:

Your orator, R. K. Dow, is a citizen of the State of New Hampshire, and your orator, Watson Matthews, is a citizen of the State of New York, and they bring their suit here against the Memphis and Little Rock Railroad Company, which is a corporation created by the laws of the State of Arkansas, and they say that on the

2 first day of May, 1877, said defendant executed a mortgage to your orators and William S. Pierson, who has since died, by which it conveyed to them all and singular its charter granted by the act of the General Assembly of the State of Arkansas, with all its rights, privileges, and immunities and franchises; and also all and singular its railroad and rights of way and easements from the west bank of the Mississippi river, in or near Hopefield, in Crittenden county, Arkansas, to Little Rock, in Pulaski county, Arkansas; the connections of said railroad with the Little Rock and Ft. Smith railway and the St. Louis, Iron Mountain and Southern railroad; its tracks, rails, inclines, trestles, depots, rights of way, leases, easements, and privileges in the city of Memphis, in the State of Tennessee; all rails, trestles, ties, tracks, side tracks, switches, bridges, depots, stations, buildings, water tanks, machine shops, car-houses, engine-houses, warehouses, workshops, superstructures, engines, cars, wagons, machinery, tools, boats, wharf-boats, inclines, oil, fuel, supplies, and equipments that said defendant then owned or might thereafter acquire in the State of Arkansas or Tennessee or elsewhere;

3 and also all and singular all lands, real estate, property of every kind, real, personal, or mixed; all books of account, records, muniments, evidences of title, and choses in action which the defendant then owned or might thereafter acquire, wherever situated; and also all the incomes, rents, issues, profits, tolls, receipts, rights, benefits, and advantages had, received, or derived by the defendant from any of the property or premises conveyed thereby; to have and to hold unto said grantees and to their survivors as joint tenants and to their assigns forever.

Said conveyance recites the issue by the defendant of bonds to the amount of $250,000, each being for the sum of $1,000, bearing interest from date at ten per centum per annum, maturing in instalments of $50,000 each on the first days of May, 1879, 1880, 1881,

1882, and 1883, the whole of each bond being payable on one of said days, and said conveyance was conditioned to be void in case said bonds should be paid according to their tenor and effect; and said mortgage was duly recorded in the proper recorder's office of the several counties in which said property lay. A copy of the same is hereto annexed, marked Exhibit A, and made part hereof.

4 Defendant remains in possession of all of said property. Said bonds were issued as recited and were sold on the market. No part of any of said bonds has been paid.

Your orators waive an oath to the answer of the defendant.

And your orators pray that a receiver may be appointed in order that the said bonds may be paid out of the earnings of said property, or that said mortgage may be foreclosed, the property sold, and the proceeds applied to the payment of said bonds, and for all other proper relief.

U. M. & G. B. ROSE, *Sol's.*

EXHIBIT A TO BILL.

Preference Ten Per Cent. Mortgage.

This indenture, made and executed the first day of May, A. D. 1877, by and between the Memphis and Little Rock Railroad Company, as reorganized, a corporation duly incorporated and chartered by the act of the General Assembly of the State of Arkansas, approved January 11th, 1853, entitled "An act to incorporate

5 the Memphis and Little Rock Plank or Railroad Company," and duly reorganized under said act and charter and the acts of the said General Assembly specially amendatory thereof, party of the first part, and William S. Pierson, R. K. Dow, and Watson Matthews, parties of the second part, witnesseth:

That whereas the party of the first part is desirous to borrow money to pay certain pressing expenses and is authorized by its said charter to do so upon mortgage of its charter and works, and whereas the stockholders of the party of the first part, at a general meeting held at the office of the said company, in the city of Little Rock, Arkansas, on the 30th day of April, A. D. 1877, by resolution, duly adopted, did authorize the president and directors of said company to borrow two hundred and fifty thousand dollars, to be paid in installments of fifty thousand dollars each, respectively, on the first days of May, in the years 1879, 1880, 1881, 1882 and 1883, with interest from date at ten per centum per annum, to issue the bonds of the company therefor, and to secure the payment of the principal and interest of

6 said bonds by a mortgage of all and singular the charter, works, and property of said company; and whereas said company is about to issue, for the purpose and by the authority aforesaid, two hundred and fifty bonds, of even date herewith, each for the sum of one thousand dollars, numbered from 1 to 250, inclusive, bearing interest from date at the rate of ten per centum per annum, payable semi-annually, the first fifty of which mature and become due on the first day of May, 1879, the second fifty of which mature

on the 1st day of May, 1880, the third fifty of which mature on the first day of May, 1881, the fourth fifty of which mature on the first day of May, 1882, and the last fifty of which mature on the first day May, 1883; which bonds are, with proper changes for maturity, in the following form:

Know all men by these presents that the Memphis and Little Rock Railroad Company, as reorganized, acknowledges itself indebted, and promises to pay the bearer hereof, at the office of
7 the Central Trust Company of the State of New York, in the city of New York, on the first day of May, A. D. ——, one thousand dollars in lawful money of the United States of America, with interest from date at the rate of ten per centum per annum, payable semi-annually, at the place aforesaid, on the first days of May and November of each year upon presentation and surrender of the interest coupons thereto annexed as they severally fall due.

This bond is one of a series of two hundred and fifty bonds of even date, each for one thousand dollars, numbered from 1 to 250, inclusive, of which fifty mature on the first day of May, in the years 1879, 1880, 1881, and 1883. The payment of all which said bonds and interest is secured by a mortgage or trust deed bearing even date herewith, by which said company has conveyed all and singular its charter, franchises, privileges, immunities, and property of every character and description to Wm. S. Pierson, R. K. Dow, and
8 Watson Matthews in trust to secure the payment of the interest and principal of said bonds as they severally become due. This bond shall pass by delivery and shall not become obligatory until authenticated by the signatures of two of the said trustees to the certificate on the back hereof.

In witness whereof the said railroad company, as reorganized, has caused this bond to be signed by its president and its corporate seal to be hereto affixed, attested by the signature of its secretary, and has caused the interest coupons hereto annexed to be signed by its treasurer under and in conformity to said deed this first day of May, A. D. 1877.

——— ———,
President of the Memphis and Little Rock Railroad Company, as Reorganized.

——— ———,
Secretary of the Memphis and Little Rock Railroad Company, as Reorganized.

We, two of the trustees in the deed mentioned in the fore-
9 going bond, do certify that this bond is one of the series of two hundred and fifty bonds secured by said deed.

——— ———,
——— ———,
Trustees.

Now, therefore, in consideration of the premises and of the sum of one dollar to it paid by the parties of the second part, and to

secure and make certain the payment of the several installments of principal and interest of said bonds as they severally become due and payable, the said party of the first part has bargained and sold, and by these presents does grant, bargain, sell, and convey, unto the said parties of the second part and to the survivor or survivors of them, as joint tenants, and not as tenants in common, all and singular its charter granted by the act of Assembly of State of Arkansas aforesaid, with all its rights, powers, privileges, immunities, and franchises, and also all and singular its railroad and rights of way and easements from the west bank of the Mississippi river, in or near Hopefield, in Crittenden county, Arkansas, to Little
10 Rock, in Pulaski county, Arkansas; the connections of said railroad with the Little Rock and Fort Smith railway and the Saint Louis, Iron Mountain and Southern railroad; its tracks, rails, ties, inclines, trestles, depots, rights of way, leases, easements, and privileges in the city of Memphis, in the State of Tennessee; all rails, trestles, ties, tracks, side tracks, switches, bridges, depots, stations, buildings, water tanks, machine shops, car-houses, engine-houses, warehouses, workshops, superstructures, engine, cars, wagons, machinery, tools, boats, wharf-boats, inclines, oil, fuel, supplies, and equipments that the said party of the first part now owns or may hereafter acquire in the States of Arkansas or Tennessee or elsewhere; and also all and singular all lands, real estate, property of every kind, real, personal, or mixed; all books of account, records, muniments, and evidences of title and choses in action which the party of the first part now owns or may hereafter acquire wherever situate, and also all the incomes, rents, issues, tolls, profits, receipts, rights, benefits, and advantages had, received, or derived by
11 the party of the first part from any of the hereby-conveyed premises; to have and to hold unto the said party of the second part, or to the survivor or survivors of them as joint tenants, and to their assigns forever; and the party of the first part covenants with the party of the second part and their assigns that it is lawfully seized of the above-granted property, charter, and franchises, has good right to convey the same in manner and form as it hereby does; that the same is free from incumbrance, and that the title thereto it will warrant and defend against all lawful claims whatsoever.

But this conveyance is made upon the following trusts and conditions and none other, to wit:

First. That so long as the party of the first part shall not make default in the payment of principal or interest of said bonds it shall retain the possession of all the property hereby conveyed and receive and enjoy the income thereof, and that, until such default, the party of the first part shall have the right to sell and convey, free
12 from this trust, any and all of the lands hereby granted not necessary or convenient to the operating of the said railroad, applying the proceeds thereof to the improvement and betterment of said railroad, its stock, and equipments.

Second. Said party of the first part will, from time to time as in-

curred, pay all charges, costs, and expenses of the parties of the second part, or either of them, incurred in or about the execution of the trust hereby reposed in them, and will indemnify and hold harmless the parties of the second part against all costs, charges, damages, and expenses which they or either of them may sustain or be put to in consequence of accepting this trust or of anything which may be done or omitted to be done under it, saving only such damages as may be incurred by or arise from the culpable act or neglect of said parties of the second part.

Third. In case default shall be made by the party of the first part in the payment of any of the sums specified in the interest coupons annexed to said bonds or in any of the principal sums specified in said bonds, and shall con-
13 tinue for thirty days after the said sums, or any of them, become due and payable, then and thereupon the said principal sums in all said bonds specified shall immediately become due and payable, and thereupon the parties of the second part, upon the written request of the holders of a majority of said bonds, shall enter upon and take possession of all and singular the charter, franchises, and property hereby conveyed, and shall and may, on a day and at a place in the city of Little Rock to be by them appointed, sell the same to the highest bidder for cash in hand, first, however, giving thirty days' notice of the time, place, and terms of sale by advertisement printed in a newspaper published in the city of Little Rock, and in a newspaper published in the city of New York; and the proceeds, after defraying the costs and expenses of this sale, they shall apply to the payment and discharge of all sums of principal and interest then due and unpaid on such bonds, and the residue they shall pay to the party of the first part, or its assigns; and in case of such sale the said parties of the second part shall and may convey the property so sold to the purchaser, which deed shall
14 convey all the title of the party of the first part to such property to the grantee therein; and in case of such sale the party of the first part hereby expressly waives and relinquishes all right to redeem such sold and conveyed property which it may or might have under the laws of the State of Arkansas.

Fourth. In case either of the parties of second part should die or resign or become for any reason unable to execute the trust of this deed or any of them, then all the trusts of this deed may and shall be executed by the survivors or survivor of them, and if all should die, resign, or become otherwise unable to execute the said trusts or any of them the holders of a majority of said bonds may, by a writing under their hands, appoint another person or persons trustee of this deed, and all the trusts hereof shall and may be executed by the trustees so appointed as fully as they might or could have been by the parties of the second part, or either of them, and with like effect.

In testimony whereof the said Memphis and Little Rock
15 Railroad Company, as reorganized, has caused this indenture to be signed by its president and has caused its corporate seal

to be affixed thereto by its secretary, attested by its said secretary, this the 1st day of May, A. D. 1877.

M. B. PRICHARD,
President of the Memphis and Little Rock Railroad Comp'y, as Reorganized.
JNO. W. GOODWIN,
Secretary of the Memphis and Little Rock Railroad Comp'y, as Reorganized.

STATE OF ARKANSAS, *County of Pulaski:*

Be it remembered that on the 1st day of May, A. D. 1877, before me, Frank Strong, an acting and duly commissioned notary public within and for the county of Pulaski, in the State of Arkansas, personally appeared M. B. Prichard, to me well known to be the person whose name appears subscribed to the foregoing deed, who, being by me first duly sworn, did make oath and say that he is the president of the Memphis and Little Rock Railroad Company, as
16 reorganized; that the foregoing deed was authorized to be executed by the stockholders of the said company and by the board of directors thereof, and that he signed the same as such president by order of the board of directors; and at the same time also appeared John W. Goodwin, to me well known to be the person whose name appears signed to the foregoing deed, who, being by me first duly sworn, did make oath and say that he is the secretary of the said company and the keeper of the corporate seal thereof; that the seal affixed to the foregoing deed is the seal of the said company; that he affixed it thereto by the order of the board of directors of said company, and each severally stated that said deed was by said company executed for the considerations and purposes therein mentioned and set forth.

In testimony whereof I hereto set my hand as such notary public and affix the seal of my office, at the city of Little Rock, in
17 the county of Pulaski aforesaid, this 1st day of May, A. D. 1877.

(Signed) FRANK STRONG,
Notary Public, Pulaski County, Ark.

And on October 8, 1883, the defendant filed the following plea:

Circuit Court of the United States, Eastern District of Arkansas. In Equity.

R. K. DOW and WATSON MATTHEWS, Plaintiffs,
v.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as Reorganized, Defendant.

The plea of the Memphis and Little Rock Railroad Company (as reorganized), defendant, to the bill of the complaint of the plaintiffs, R. K. Dow and Watson Matthews.

This defendant, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged to to be true in such manner and form as the same are thereby and

therein set forth and alleged, for plea to the whole of the said
18 bill, or to so much and such part of the said bill as prays for the foreclosure of the mortgage or trust conveyance therein mentioned, saith that on the 10th day of April, 1883, the Equitable Life Assurance Society of New York, Alanson Trask, Virginia M. F. Monroe, Henry G. Marquand, and Daniel W. McWilliams, the holders of a majority of the bonds secured by said mortgage, exhibited their bill in this honorable court against this defendant and the complainants herein, R. K. Dow and Watson Matthews, as trustees of said mortgage, and that on the first day of June, 1883, the same complaiants filed an amended bill in the same cause, by which original and amended bill the said Equitable Life Assurance Society of New York, Alanson Trask, Virginia M. F. Monroe, Henry G. Marquand, and Daniel W. McWilliams prayed relief against this defendant in the same manner and for the same matters and to the same effect as the said plaintiffs now pray by their said present bill; and
19 also prayed, for reasons in their said amended and original bills mentioned, that R. K. Dow and Watson Matthews, plaintiffs in this cause, be removed as trustees of said mortgage; that this defendant appeared, and on this 8th day of October, 1883, put in its answer to the said amended and original bill, and the said former original and amended biil and the several proceedings under the former cause, as this defendant avers, now remain depending and of record in this honorable court, the said cause being yet undetermined and undismissed; all which several matters and things this defendant doth aver, and it pleads said former bill, answer, and said several proceedings in the said former suit in bar to the said plaintiffs' present bill, and humbly demands the judgment of this honorable court whether it shall be put to any further or other answer thereto, and prays to be hence dismissed with its costs and charges in this behalf sustained.

——— ———,
Counsel for Def'd't.

20 I, B. C. Brown, being duly sworn, do say that I am counsel for defendant; that the chief officers of the defendant are absent from this State, and that the foregoing demurrer is not interposed for delay.

B. C. BROWN.

Subscribed and sworn to before me this eighth day of October, 1883.

——— ———,
Notary Public.

21 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 22 day of October, anno Domini one thousand eight hundred and 83, at the United States court-room, in

the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on October 22, 1883:

R. K. Dow *et al.*

v.

MEMPHIS AND LITTLE ROCK RAILROAD Co., as Reorganized.

On this day come said plaintiffs, by U. M. and G. B. Rose, Esqs., their solicitors, and by leave of the court file here their replication to the plea of the defendant, and on their prayer it is ordered that the truth of said plea be inquired of.

Which replication is as follows:

In the United States Circuit Court for the Eastern District of Arkansas. In Equity.

R. K. Dow *et al.*, Plaintiffs,

v.

THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as Reorganized, Defendants.

22 Come the said plaintiffs, &, as to the plea of the defendant filed herein, they say that they will maintain and prove that the same is not true in fact, and they pray that the truth thereof may be inquired of by the court.

U. M. & G. B. ROSE, *Sol's.*

And on October 30, 1883, as follows:

R. K. Dow *et al.*, Plaintiffs,

v.

MEMPHIS & LITTLE ROCK RAILROAD COMPANY, as Reorganized, Defendant.

On this day come said plaintiffs, by U. M. & G. B. Rose, their solicitors, and on their motion and by leave of the court they withdraw their replication to the plea herein and their motion to have the truth of the same inquired of, and ask that said plea be set down for argument, which is accordingly done.

And on December 3, 1883, the following proceedings were had, to wit:

R. K. Dow *et al.*

v.

MEMPHIS & LITTLE ROCK RAILROAD Co., as Reorganized.

On this day came the plaintiffs, by U. M. & G. B. Rose, Esqs., their solicitors, and also came the defendant, by B. C. Brown, Esq., its solicitor, and the court being of opinion that the plea of a former suit pending herein is not good or sufficient in law, it is now ordered and considered that said plea be held for naught.

And on Feb'y 23, 1884, as follows:

23 R. K. Dow and WATSON MATTHEWS, Plaintiffs,
v.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as Reorganized, Defendant. } 543.

Now, on this day, come said plaintiffs, by R. & R., their solicitors, and the defendant saying nothering further as to why a decree shall not be rendered herein as prayed by said bill, it is now ordered, considered, and decreed that said bill be taken as true and confessed against said defendant.

And on March 20, 1884, as follows:

R. K. Dow *et al.*
v.
MEMPHIS AND LITTLE ROCK RAILROAD CO., as Reorganized.

Come the complainants, by U. M. & G. B. Rose, Esqs., their solicitors, and file herein their motion to consolidate; which motion to consolidate is as follows:

In the United States Circuit Court for the Eastern District of Arkansas. In Equity.

24 R. K. Dow and WATSON MATTHEWS, Plaintiffs,
v.
MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as Reorganized, Defendants.

Comes said plaintiffs and show the court that this case and that of the Equitable Life Assurance Society against the same defendants, now pending in this court on the same side of the docket, involves the same controversy and no other; they therefore pray that said two causes may be consolidated for the purpose of making one decree in both.

March 20, 1884.

U. M. & G. B. ROSE, *Solicitors.*

And on March 24, 1884, as follows:

R. K. Dow and WATSON MATTHEWS
v.
MEMPHIS & LITTLE ROCK RAILROAD, as Reorganized.

Come the complainants, by U. M. & G. B. Rose, Esqrs., their solicitors, and file herein their motion for a receiver.

Which motion is as follows:

25 In the United States Circuit Court for the Eastern District of Arkansas. In Equity.

R. K. Dow and Watson Matthews, Plaintiffs,
v.
Memphis and Little Rock Railroad Company, as Reorganized, Defendant.

Come said plaintiffs and move the *the* court to appoint a receiver to take charge of the property described in the bill herein, or to cause it to be delivered to themselves as trustees upon the execution by them of such bond as may be required of them by the court.

U. M. & G. B. ROSE, *Sol's.*

And on April 4, 1884, as follows:

Robert K. Dow and Watson Matthews
v.
The Memphis and Little Rock Railroad Company, as Reorganized. } 543.

Now, on this day, came said plaintiffs, by U. M. & G. B. Rose, their solicitors, and also came said defendant, by B. C. Brown,
26 its solicitor, and the motion of said defendant to have cause No. 538, on the chancery side of this court, wherein the Equitable Life Assurance Society is plaintiff and said railroad company is defendant, consolidated with this cause for the purpose of a final decree, having been duly considered, it is now ordered that said motion be granted, and that the final decree to be rendered in this cause and all subsequent proceedings herein apply to and cover all matters in controversy in either suit.

Robert K. Dow and Watson Matthews
vs.
The Memphis & Little Rock Railroad Company, as Reorganized. } 543.

Now, on this day, came the plaintiffs, by their solicitors, U. M. & G. B. Rose, and also came said defendant, by B. C. Brown, its solicitor, and this cause came on for final hearing, and the court being now sufficiently advised as to the proper decree to be ren-
27 dered herein, and it now appearing to the court that on the first day of May, 1877, said defendant- executed and issued their bonds of that date for the aggregate sum of two hundred and fifty thousand dollars ($250,000), each bond being for the sum of one thousand dollars (1,000), to bear interest from date at the rate of ten per centum per annum, payable semi-annually on the first days of May and November in each year, said bonds being numbered from one to two hundred and fifty, inclusive, and maturing as follows:

Fifty bonds on the first day of May, 1879; fifty bonds on the first day of May, 1880; fifty bonds on the first day of May, 1881; fifty

bonds on the first day of May, 1882; fifty bonds on the first day of May, 1883, and that in order to secure the payment of said bonds the defendant executed to the plaintiffs and to William S. Pierson, who has since deceased, a mortgage, dated on the same day with said bonds, by which said defendant conveyed to plaintiffs and to said Pierson and to the survivor or survivors of them as joint tenants and not as tenants in common all and
28 singular its charter granted by the act of Assembly of the State of Arkansas, with all powers, privileges, immunities, and franchises, and also all and singular its railroad and rights of way and easements from the west bank of the Mississippi river in or near Hopefield, in Crittenden county, Arkansas, to Little Rock, in Pulaski county, Arkansas; the connections of said railroad with the Little Rock and Fort Smith railway, the Saint Louis, Iron Mountain and Southern railroad, its tracks, rails, ties, inclines, trestles, depots, rights of way, leases, easements, and privileges in the city of Memphis, in the State of Tennessee; all rails, trestles, ties, tracks, side tracks, switches, bridges, depots, stations, buildings, water tanks, machine shops, car-houses, engine-houses, warehouses, workshops, superstructures, engines, cars, wagons, machinery, tools, boats, wharf boats, inclines, oil, fuel, supplies, and equipments that the said defendant then owned or might thereafter acquire in the State-
29 of Arkansas or Tennessee or elsewhere, and also all and singular all lands, real estate, property of every kind, real, personal, or mixed; all books of account, records, muniments, and evidences of title and choses in action which the defendant then owned or might thereafter acquire, wherever situate, and also all the incomes, rents, issues, tolls, profits, receipts, rights, benefits, and advantages had, received, or derived by the said defendant from any of the thereby-conveyed premises; to have and to hold unto the said Dow, Matthews, and Pierson and to the survivor or survivors of them as joint tenants and to their assigns forever.

And it appearing now that no part of the principal of said bonds has been paid and that no part of the interest that has accrued thereon since the first day of January, 1882, has been paid, and it being now admitted in open court that the time of payment of fifty thousand dollars of said bonds was, after their issue, extended by agreement between the makers and holders thereof until the first day of May, 1884, it is now, therefore, ordered, considered,
30 and decreed by the court that the defendant pay here into this court the sums due on said bonds for principal and interest thereon within thirty days from this date, and that the defendants pay all the costs of this suit, and that unless said payment be made within said time the equity of redemption of said defendant in and to all the property conveyed by said mortgage be forever barred and foreclosed.

Reference is made to C. P. Redmond, Esq., the master of this court to report the amount due on said bonds; and said master is directed to make sale of all said property conveyed in said mortgage in case said money shall not be paid within said thirty days from this time. Said sale shall be for cash; thirty days' previous

notice of the time, place, and terms of said sale shall be given by said master by advertisement in some newspaper published in the city of Little Rock and in the New York Herald; and all of said property conveyed shall be sold in a body to the highest bid-
31 der on an early day, to be fixed by the master, not later than sixty days from this date, between the hours of ten in the forenoon and four in the afternoon, at the front door of the post-office building in the city of Little Rock. At said sale the master shall first offer said property subject to the lien of the decree rendered by this court on the 14th day of May, 1883, in favor of Robert K. Dow, Watson Matthews, and Charles Moran, for the sum of two hundred and sixty-one thousand four hundred and fifty-six dollars and twenty-seven cents ($261,456.27), and to the lien of a second mortgage executed by said defendant on the 2nd day of May, 1877, to said Dow, Matthews, and Pierson to secure the payment of certain bonds issued by said defendant for the aggregate sum of two million six hundred thousand dollars.

And if the highest amount bid, subject to these liens, shall equal or exceed the amount due on this decree, including costs of suit, then said master shall strike off said property to the highest
32 bidder; but if the highest bid be for less than the amount due on this decree, then said master shall at once and without further advertisement proceed to sell said property free of said liens to the highest bidder without reservation.

It is further ordered that at said sale the overdue bonds and coupons secured by said mortgage of May 1st, 1877, shall be received in payment of the purchase-money as so much cash for their *pro rata* of the fund distributed under this decree.

It is further ordered that at said sale the overdue bonds and coupons secured by said mortgage of May 1st, 1877, shall be received in payment of the purchase-money as so much cash for their *pro rata* of the fund to be distributed under this decree. It is further decreed that no person shall be allowed to bid at such sale unless he shall within five days next preceding the day of sale have deposited in the registry of this court twenty-five thousand dollars,
33 either in cash or in said overdue bonds and coupons. Said master is also directed to report to the court a proper amount to be allowed to the plaintiffs as trustees for their services and for their counsel fees in this cause, which shall be allowed and taxed as part of the costs herein, and this cause reserved for further directions.

Now, also, comes the Equitable Life Assurance Society, and deposits in the registry of the court the bonds of the said defendant, dated May 1st, 1877, of the par value of fifty-six thousand dollars; and also comes H. G. Marquand and deposits like bonds of the par value of nineteen thousand dollars; and also comes Alanson Trask, who deposits like bonds of the par value of nineteen thousand dollars; and also comes Virginia F. M. Monroe and deposits like bonds of the par value of nineteen thousand dollars; and also comes Daniel W. McWilliams and deposits like bonds of the par value of eighteen thousand dollars; and it is now ordered that said bonds

be kept in the registry of the court subject to further orders herein.

34 And on April 5th, 1884, as follows:

ROBERT K. DOW and WATSON MATTHEWS
v.
MEMPHIS & LITTLE ROCK RAILROAD CO., as Reorganized.

On this day came the plaintiffs, by U. M. & G. B. Rose, Esqs., their solicitors, & show to the court that the decree rendered on the 4th day of April, 1884, herein contains a clerical error, and by way of amendment thereof it is now ordered that the said decree be amended by stating that no part of the interest on said bonds that has accrued since the first day of November, 1881, has been paid; and it is further ordered that said advertisement of sale be inserted in the New York Journal of Commerce instead of the New York Herald, and that said advertisement be inserted in said newspaper four times.

35 UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas begun and holden on Monday, the 14 day of April, anno Domini one thousand eight hundred and 84, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on April 15, 1884:

R. K. Dow *et al.*
v.
MEMPHIS & LITTLE ROCK RAILROAD CO., as Reorganized.

Come the complainants, by U. M. & G. B. Rose, Esq'r's, their solicitors, and file herein their motion to postpone sale.

Which motion is as follows:

U. S. C't C't, E. Dist. Ark. In Equity.

R. K. DOW and WATSON MATTHEWS, Plaintiffs,
v.
THE M. & L. R. R. R. CO., Def't.

Come said plaintiffs and pray that the sale under the decree herein may *may* be postponed for a few days.

U. M. & G. B. ROSE.

36 And on April 16, 1884, as follows:

R. K. Dow *et al.*
v.
MEMPHIS AND LITTLE ROCK RAILROAD CO., as Reorganized.

On this day come the complainants, by U. M. & G. B. Rose, Esqs. their solicitors, and the defendant, by B. C. Brown, Esq., its solicitor,

and the defendant prays an appeal to the Supreme Court of the United States from the decree in this cause by this court rendered on the 4th day of April, 1884; which appeal is granted.

And on April 26, 1884, as follows:

R. K. Dow *et al.*

v.

Memphis & Little Rock Railroad Co., as Reorganized.

Comes the defendant, by B. C. Brown, Esq., its solicitor, and files herein its supersedeas bond, which is approved by the Court; which bond is as follows:

37 *Supersedeas Bond.*

In the Circuit Court of the United States for the Eastern District of Arkansas. In Chancery.

R. K. Dow and Watson Matthews, as Trustees, Complainants,

v.

The Memphis and Little Rock Railroad Company, as Reorganized, Defendant.

Know all men by these presents that we, the Memphis and Little Rock Railroad Company, as reorganized, and Jay Gould, — and A. L. Hopkins, as —, are held and firmly bound unto R. K. Dow and Watson Matthews, as trustees of a certain deed executed by the Memphis and Little Rock Railroad Company, as reorganized, on May 1, 1877, and to the survivor of them and their or his successors, in the sum of twenty-five thousand dollars; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and ad-

38 ministrators firmly by *by* these presents.

Sealed with our seals. Dated this 22d day of April, 1884.

Whereas the above-bounden Memphis and Little Rock Railroad Company, as reorganized, has appealed from the decree of the circuit court of the United States for the eastern district of Arkansas rendered on the 4th day of April, 1884, in the above-entitled cause to the Supreme Court of the United States:

Now, therefore, the condition of this obligation is such that if the above-named Memphis and Little Rock Railroad Company, as reorganized, shall prosecute its said appeal to effect and shall answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

THE M. & L. R., &c.,
By JAY GOULD.
A. L. HOPKINS.

United States of America, *Southern District of New York:*

39 Before me, W. W. Cotton, a notary public in and for the county of New York, State of New York, on the 23rd day of

April, 1884, appeared Jay Gould and A. L. Hopkins, obligors in above and foregoing bond, who, being severally sworn, say that they are citizens of the State of New York and that they severally own property situate in the district aforesaid subject to execution, and over and above all their just debts, the said Jay Gould to the value of fifty thousand dollars and the said A. L. Hopkins to the value of fifty thousand dollars.

JAY GOULD.
A. L. HOPKINS.

Subscribed and sworn to before me the day and year aforesaid.
[SEAL.] W. W. COTTON,
Notary Public, Kings Co., N. Y.

Certificate filed in New York Co.

40 STATE OF NEW YORK, } ss:
City and County of New York, }

Be it known that on the 23rd day of April, 1884, before me, a notary public in and for the county of New York, State of New York, personally came Jay Gould and A. L. Hopkins, to me personally known and known to me to be the same persons who executed the foregoing instrument, and they did then and there acknowledge the execution of the foregoing instrument to be their voluntary act and deed.

Witness my hand and official seal this 23d day of April, 1884.
[SEAL.] W. W. COTTON,
Notary Public, Kings Co.

Certificate filed in New York Co.

STATE OF NEW YORK, } ss:
City and County of New York, }

I, Patrick Keenan, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that W. W.
41 Cotton has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Kings, with his autograph signature, and was at the time of taking the proof of acknowledgment of the annexed instrument duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary and verily believe the signature to the said certificate of proof or acknowledgment to be genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 23d day of April, 1884.
[SEAL.] PATRICK KEENAN, *Clerk.*

And on April 30, 1884, as follows:

ROBERT K. DOW and WATSON MATTHEWS, Plaintiffs,

v.

42 MEMPHIS & LITTLE ROCK RAILROAD COMPANY, as Reorganized, Defendant.

Now, on this day came said plaintiffs, by U. M. & G. B. Rose, and also came said defendant, by B. C. Brown, and also came Charles P. Redmond, master herein, and files his report, and, by consent, it is ordered that said report be filed now for then, as of the 24th day of April, 1884, and said report is now in all things approved and confirmed.

Which report is as follows:

Master's Report.

Circuit Court of the United States, Eastern District of Arkansas.
Master's Office.

ROBERT K. DOW and WATSON MATTHEWS
vs.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, (as Reorganized.) } 543.

To the Hon. the judges of the circuit court of the United States for the eastern district of Arkansas:

43 The master, to whom this case was referred to report the amount due on the mortgage herein and the amount to be allowed complainants for their services as trustees and for their counsel fees, would respectfully report that on the 4th day of April, 1884, he gave notice to the counsel for the respective parties (a copy of said notice is hereto attached, marked "Exhibit A") that he would, on the 12th day of April, 1884, proceed to the hearing of the matters herein referred; that no person appeared in his office in compliance with said notice on said day.

The master thereupon, assuming the deposition of A. H. Calef, treasurer of said railroad (filed herein and marked "Exhibit B") as to the dates and terms of extension of said bonds to be correct, proceeded to compute the amount of interest due upon the bonds and coupons named in the decree and the judgment obtained upon a part of said bonds and coupons.

And has assumed as a convenient date to which to compute said interest May 1st, 1884, a date prior to any possible day of sale and the day upon which the last of said bonds mature.

44 And finds and reports that there will be due upon said bonds and coupons, and judgments rendered thereon on May 1st, 1884, two hundred and eighty-six thousand eight hundred and forty-two dollars and twelve cents ($286,842\frac{12}{100}$).

The master further reports that on the 18th day of April, 1884, he was attended by the counsel for the respective parties hereto,

whereupon there was filed the claim of R. K. Dow, trustee, for $12,500.00 *dollars* for compensation for his services as trustee in this matter; and the deposition of said Dow was then taken in support of said claim. Said claim and deposition are hereto attached (marked "Exhibit C"). And at the same time and place was filed the claim of Watson Matthews for $1,000.00 *dollars* for his services as trustee herein. Said claim is attached (marked Exhibit "D").

And the said claims of said trustees having been considered, and no objection being made thereto, and they being together less than five per cent. on the amount due on the mortgage, are deemed
45 by the master, considering the responsibility of their services, proper to be allowed as a charge upon the proceeds of sale.

And it is therefore reported that R. K. Dow be allowed $12,500.00 *dollars* for his services as trustee herein, and that said Watson Matthews be allowed $1,000.00 *dollars* for his services as trustee herein.

Counsel Fees.

And U. M. & G. B. Rose, at the same time and place, filed their claim for services rendered the trustees as solicitors in this matter, for $15,000.00 *dollars*, marked "Exhibit E," and supported by the statement of U. M. Rose, marked "Exhibit F," which claim is also supported by the affidavit of Jno. M. Moore, Esq., a prominent attorney in railroad matters (marked "Exhibit G"), showing the claim to be reasonable under the rules of the profession.

Considering the large amount involved and the difficult and responsible character of the services rendered and to be rendered here and in U. S. Supreme Court, and the testimony — Mr. Moore, the amount charged is deemed by the master as fair and just
46 and should be allowed.

The master, therefore, reports that there be allowed to U. M. & G. B. Rose for their legal services to the trustees herein the sum of fifteen thousand dollars ($15,000.00).

Claim of J. M. Rose.

John M. Rose, Esq., the counsel for the Equitable Life Assurance Society *et al.*, whose bill for the foreclosure of the mortgage herein was consolidated with this suit, has filed with the master his claim for an allowance of $10,000.00 *dollars* for counsel fees for his services in filing the bill and conducting that suit so consolidated with this —; said claim is hereto attached, marked "Exhibit H," and is supported by his affidavit, "Exhibit J."

The claim of Jno. M. Rose, Esq., is disallowed by the master because not within the terms of the order of reference herein, which is to report "amount to be allowed to the plaintiffs as trustees for their services and for their counsel fees in this cause," and for
47 the further reason that the terms of the mortgage in this cause only provide for the legal expenses of the trustees. As Mr. J. M. Rose was not of counsel for the trustees he is not deemed by the master within the terms of the order of reference herein. What-

ever his equitable demands for compensation from the proceeds of sale may be, if any, the master deems he has no authority to pass upon.

The master, having prepared this report as above, was, on the 24th day of April, 1884, attended by the counsel for the respective parties, as appears by "Exhibit K" hereto, and the said report was read.

To which report said defendant, by B. C. Brown, Esq., its attorney, excepts; which exception is by the master overruled.

CHAS. P. REDMOND, *Master.*

48 "EXHIBIT A."

EASTERN DISTRICT OF ARKANSAS.

ROBERT K. DOW and WATSON MATTHEWS, Complainants,
versus
THE MEMPHIS and LITTLE ROCK RAILROAD COMPANY, as Reorganized, Defendant. } No. 543.

MASTER'S OFFICE.

By virtue of an order of reference made in the above-entitled cause on the 4th day of April, A. D., 1884, I do hereby appoint the 12th day of April, A. D. 1884, at 10 o'clock in the forenoon of that day, as the time and my office in the city of Little Rock, Arkansas, as the place to hear and consider of the matters in said order referred, at which time and place all parties concerned are notified to attend and take such part in the proceedings as by law and the orders of said court they are entitled. Upon failure of appearance of either party said matter will be proceeded with *ex parte.*

Dated the 8th day of April, A. D. 1884.

CHAS. P. REDMOND, *Master.*

49 Acknowledge service of a copy of above notice this — day of ——, 18—.

B. C. BROWN,
Solicitor for M. & L. R. R. Co.

We acknowledge service of a copy of above notice this 8th day of April, A. D. 1884.

U. M. & G. B. ROSE,
Solicitors for Pl'f's.

Acknowledge service of a copy of above notice this — day of ——, A. D. 18—.

JNO. M. ROSE,
Solicitor for Eq. Life — et als.

EXHIBIT B.

U. S. Circuit Court for the Eastern District of Arkansas.

THE EQUITABLE LIFE ASSURANCE SOCIETY
vs.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as Reorganized.

SOUTHERN DISTRICT OF NEW YORK, *City and County of New York,* } *ss:*

50 A. H. Calef, being duly sworn, says that he is the treasurer of the Memphis and Little Rock Railroad Company, as reorganized, the defendant above named. Of the bonds known as the ten per cent. preference mortgage bonds of the defendant company, bonds of the amount of fifty thousand dollars fell due May first, 1879, which bonds were extended to May 1st, 1884, at the rate of eight per cent. per annum; bonds of the amount of fifty thousand dollars fell due May first, 1880, which were extended to May first, 1883, at the rate of six per cent. per annum; bonds to the amount of fifty thousand dollars fell due May first, 1881, which were extended to May first, 1883, at the rate of six per cent. per annum; bonds to the amount of fifty thousand dollars fell due May first, 1882, which were extended to May first, 1883, at the rate of six per cent. per annum, and bonds to the amount of fifty thousand dollars fell due May first, 1883.

Interest was paid on all of the bonds aforesaid to and including May first, 1882.

51 Interest is due on all of said bonds from said first day of May, 1882.

A. H. CALEF.

Sworn to before me this 19th day of April, 1884.
[SEAL.] WM. J. HARDING,
Notary Public, Kings County, New York.

Certificate filed in New York county.

EXHIBIT C.

Circuit Court of the United States, Eastern District of Arkansas.

R. K. DOW and WATSON MATTHEWS, Trustees,
vs.
MEMPHIS & LITTLE ROCK RAILROAD CO. (as Reorganized).

MASTER'S OFFICE, *April* 18, 1884.

Present: U. M. & G. B. Rose, for complainants; J. M. Rose, for Equitable Life Assurance Soc.; B. C. Brown, for defendant.

ROBERT K. DOW, being duly sworn, deposes and says:

I am one of the plaintiffs and trustees in this cause. I
52 have rendered the following services in this cause: I overhauled the mortgage and consulted with counsel; came out

to Little Rock; talked and planned with the holders of other mortgages on the property and encumbrancers, so as to be sure we would get a decree establishing the rights of the bondholders under the mortgages, and when the property should come to a sale be certain that it would bring enough to pay the whole amount due, with interest and costs; also to be certain that in the event of a sale that a purchaser could be found outside of the mortgage creditors, so that one portion of the bondholders could not take advantage of another portion or put them to costs and trouble in bidding up the property to the total amount in order to protect their claims.

It is sometimes very difficult for the holders of a minority of bonds to raise funds to pay off the majority when property is put up for sale under a mortgage. I considered it my duty to protect the man who might hold only a small amount of bonds equally with those who held large amounts. I also was at great trouble
53 and labor to endeavor to get a fund of some 218 or 219,060.00 dollars now in the registry of the court applied on account of this mortgage claim, and also at a great deal of trouble in investigating and examining the accounts of E. K. Sibley, the receiver of the property in case of Sage *vs.* the company, in order to see if I could not increase the fund in court. I have also had a great deal of trouble in connection with this suit because the bill of the Equitable Life Insurance Co. attacked my conduct and position in regard to my action under this mortgage, said attacks being wholly and totally without foundation, as I have been from the beginning and am now ready and anxious to do everything in my power to insure payment of all the bonds secured by this mortgage, with interest and costs. I also, in conjunction with others, two years ago, or thereabouts, raised the sum of about $240,000.00 *dollars* at great personal risk, cost, and trouble to pay off a judgment which was prior in lien to the lien of this mortgage, and upon which a sale of the mortgaged property was threatened. Had I not raised this sum
54 and thereby stopped the sale of the property under said judgment it would have resulted in utterly destroying the security pledged under this mortgage.

I consider my personal services in this matter have been worth the sum of $12,500.00 *dollars*, that being five per cent. on the principal sum, without taking into account the accrued interest.

Cross-examination by B. C. BROWN, for defendant:

1. Please state the name of the holders of the bonds secured by this mortgage with whom you have consulted.

Ans. Amos R. Eno, Henry Talmadge, Mr. Barnes, F. H. Cossitt, the representative of "Sullivan Savings Bank," George Dow, and various other parties, scattered bondholders, whose names I can't recall. I was *was* unaware as to who held the balance of the b'ds until after suit was brought. I consulted with all bondholders that I knew.

R. K. DOW.

Subscribed & sworn to before me this 18th day of April, 1884.
CHAS. P. REDMOND, *Master.*

55 U. M. ROSE testified as follows:

EXHIBIT F.

I am a practicing lawyer. My firm is composed of myself and G. B. Rose. We attended to the case of The Equitable Life Assurance Society *v.* R. R. Co. *et al.* for the trustees, who were made defendants therein. We also filed the bill for foreclosure for the trustees and attended to the case for them. There was no other counsel for our clients in either case.

Our claim for fees includes future services in the Supreme Court of the U. S., an appeal having been prayed. I regard our charge for services as being a reasonable and proper one.

U. M. ROSE.

No cross-examination.

CHAS. P. REDMOND, *Master.*

J. M. ROSE testified:

"EXHIBIT J."

I am a practicing attorney. I was employed by the Equitable Life Assurance Society and six other bondholders to foreclose
56 the preference mortgage. I filed the bill and prosecuted the cause and submitted it for final decree, and it was consolidated with the case of R. K. Dow *et al.*, trustees, filed for the same purpose. I have advised an appeal to the Supreme Court of the United States. The claim is for all services either in this court or any other, and is, I think, reasonable for a case involving $131,000, not counting interest.

Qu-s. 1. Did you ever ask or request R. K. Dow or Matthews to foreclose this mortgage?

Ans. No.

J. M. ROSE.

Subscribed and sworn to before me this 18th day of April, 1884.
CHAS. P. REDMOND, *Master.*

The trustees of this and the general mortgage object to the payment of the fees of J. M. Rose from the fund of the mortgage on the ground that the fees of counsel for the Equitable Life Assurance Company and others as individual bondholders are not covered by the mortgage.

That the trustees were always ready and willing to bring
57 suit and did commence suit as soon as they found out that a majority of the bondholders desired suit brought, and as soon as they believed it for the interest of their *cestui qui trust*, and as soon as, in their opinion, they could legally bring suit.

Above objection made by R. K. Dow, trustee.

CHAS. P. REDMOND, *Master.*

EXHIBIT D.

In the United States Circuit Court for the Eastern District of Arkansas. In Equity.

R. K. Dow and WATSON MATTHEWS, Plaintiffs,

v.

THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as Reorganized, Defendant.

IN THE MASTER'S OFFICE.

Comes Watson Matthews, one of said plaintiffs, and says that his services as trustee herein have been worth the sum of $1,000, and he prays that said sum may be allowed him, payable out of the fund in court in this cause.

WATSON MATTHEWS.

58 EXHIBIT E.

In the United States Circuit Court for the Eastern District of Arkansas.

Dow and MATTHEWS, Plaintiffs,

v.

THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as Reorganized, Defendants.

IN THE MASTER'S OFFICE.

U. M. & G. B. Rose put in their claim here for counsel fees in this cause and in the case of The Equitable Life Assurance Society against the same defendant, said two cases having been consolidated, for all past services and future services in the Supreme Court and in this court — the — of $15,000.00.

U. M. & G. B. ROSE.

JOHN M. MOORE, being first duly sworn, deposes and says as follows:

EXHIBIT G.

I think the foregoing fee is reasonable and not more than any attorney would charge for similar services under the rules of the profession.

JOHN M. MOORE.

Subscribed and sworn to before me this 24th day of April, 1884.

CHAS. P. REDMOND, *Master.*

59 EXHIBIT H.

R. K. Dow *et al.*, Trustees,

v.

THE MEMPHIS AND LITTLE ROCK RAILROAD CO., as Reorganized,

and

THE EQUITABLE LIFE ASSURANCE SOCIETY *et als.*

v.

THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as Reorganized.

To Hon. Charles P. Redmond, master:

I claim fees for my services as attorney in the cause last above mentioned, and ask that I receive a proportionate share of the fees allowed in these cases.

I represented $131,000.00 of the issue of $250,000 of the bonds secured by the preference mortgage, and prosecuted the cause until it was consolidated with the first-named cause for the purposes of decree. The bill in the last-named cause was necessary, because the trustees neglected to take any proceedings to foreclose the preference mortgage or protect the bondholders' rights.

If you consider it best to make a separate allowance in each case I ask the sum of ten thousand dollars for all future services.

Respectfully, J. M. ROSE.

60 EXHIBIT K.

U. S. Circuit Court, Eastern District of Arkansas.

ROBERT K. Dow and WATSON MATTHEWS
vs.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY (as Reorganized.) } No. 543.

MASTER'S OFFICE.

We hereby enter our appearance in the master's office this 24th day of April, 1884, to the reading of the master's report herein without other notice.

U. M. & G. B. ROSE,
B. C. BROWN,
For Def't.

Exhibit K.

And on May 24, 1884, as follows:

R. K. Dow & Watson Matthews

v.

Memphis & Little Rock Railroad Co., as Reorganized.

On this day came the plaintiffs, by U. M. & G. B. Rose, Esqrs., their solicitors, and pray an appeal herein to the Supreme Court of the United States, which is granted, and said plaintiffs pre-
61 sent and file their appeal bond, of which the following is a copy:

Know all men by these presents that we, Robert K. Dow and Watson Matthews, as principals, and F. H. Cossitt and Charles Moran, as sureties, are held and firmly bound unto the Memphis and Little Rock Railroad Company, as reorganized, in the penal sum of twenty-five thousand dollars.

Given under our hands this 13th day of May, 1884.

The condition of the above obligation is such that whereas in a certain cause pending in the United States circuit court for the eastern district of Arkansas, on the chancery side thereof, wherein said Dow and Matthews are plaintiffs and said railroad company is defendant, the said Dow and Matthews have prayed an appeal to the Supreme Court of the United States: Now, if said Dow and Matthews shall prosecute their said appeal to effect & if they fail to make their plea good — shall answer all damages and costs, then the above obligation shall be null & void; else to remain in full force and virtue.

(Signed) ROBERT K. DOW.
" WATSON MATTHEWS.
" F. H. COSSITT.
" CH'S MORAN.

Witnesses to both signatures:
GEO. L. GUTHRIE.

62 State of New York, *County & City of New York:*

On this day came before me, a notary public for said county and city, Frederick H. Cossitt and Charles Moran, who, being by me duly sworn, made oath that after payment of their just debts and setting aside property exempt from execution they are severally worth more than the sum of $25,000.00.

Sworn to and subscribed before me.

In testimony whereof I have hereunto set my hand as such notary public this 14th day of May, 1884.

CHARLES S. DEVLIN,
Notary Public 135, *N. Y. Co.*

Said bond is approved by the court, and it is ordered that the decree herein be superseded pending said appeal.

The Equitable Life Assurance Society *et al.* against The Memphis and Little Rock Railroad Company, as reorganized, *et. al.* is as follows:

63 THE EQUITABLE LIFE ASSURANCE SOCIETY and Others, Complainants,

v.

THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY (as Reorganized) and Others, Defendants.

To the honorable the judges of the circuit court of the United States for the eastern district of Arkansas, in chancery sitting:

The Equitable Life Assurance Society of the United States, a corporation chartered by and organized under the laws of the State of New York and having its domicile and chief place of business in that State and a citizen thereof; Alanson Trask, who is a citizen of the State of New York; Virginia M. F. Monroe, who is a citizen of the State of Connecticut; Henry G. Marquand, who is a citizen of the State of New York, and Daniel W. McWilliams, who is a citizen of the State of New York, who sue for themselves and all other holders of bonds of the issue hereinafter first mentioned who may come in and contribute to the expense of this suit, bring this
64 their bill of complaint against the Memphis and Little Rock Railroad Company, as reorganized, a corporation chartered by and organized under the laws of the State of Arkansas and having its domicile therein and in the eastern district thereof, and a citizen of said State; R. K. Dow, who is a citizen of the State of New Hampshire, and Watson Matthews, who is a citizen of the State of New Jersey, and, complaining, show unto your honors that on May first, 1877, defendant, the Memphis and Little Rock Railroad Company (as reorganized) executed in due form of law and sold and delivered to divers persons its two hundred and fifty several bonds, the first fifty of which matured and became payable on May the first, 1879; the second fifty of which matured and became payable on May the first, 1880; the third fifty of which matured and became payable on May the first, 1881; the fourth fifty of which matured and became payable on May the first, 1882, and the last fifty
65 of which were expressed to mature and become payable on May the first, 1883; by each of which said bonds said company, under its seal, promised and obligated itself on the day of its maturity to pay the bearer thereof one thousand dollars, with interest thereon from date at the rate of ten per centum per annum, payable semi-annually, on the first days of May and November in each year, at the office of the Central Trust Company of the State of New York, in the city of New York, upon the presentation and surrender of the coupons for such interest executed by said company and attached to said bonds as they severally fell due.

All of which appears by reference to a copy of one of said bonds contained in the deed next hereinafter mentioned and exhibited.

To secure and make certain the payment at respective maturities of the principal and interest of said bonds, the said railroad company,

by its deed of May the first, 1877, duly executed and delivered, conveyed to the defendants, R. K. Dow and Watson Matthews, and
66 to one William S. Pierson, who has since died, and is not sued, and to the survivor or survivors of them as joint tenants, "all and singular its charter granted by the act of Assembly of the State of Arkansas aforesaid, with all its rights, powers, privileges, immunities, and franchises, and also all and singular its railroad and rights of way and easements from the west bank of the Mississippi river, in or near Hopefield, in Crittenden county, Arkansas, to Little Rock, in Pulaski county, Arkansas; the connection of said railroad with the Little Rock and Fort Smith railway and Saint Louis, Iron Mountain and Southern railroad; its tracks, rails, ties, inclines, trestles, depots, rights of way, leases, easements, and privileges in the city of Memphis, in the State of Tennessee; all rails, trestles, ties, tracks, side tracks, switches, depots, bridges, stations, buildings, water tanks, machine shops, car-houses, engine-houses, warehouses, workshops, superstructures, engines, cars, wagons, machinery, tools, boats, wharf-boats, inclines, oil, fuel, supplies, and equipments that
67 the said party of the first part now owns or might thereafter acquire in the States of Arkansas or Tennessee or elsewhere; and also all and singular all lands, real estate, property of every kind, real, personal, or mixed; all books of account, records, muniments, and evidences of title and choses in action which the party of the first part then owned or might thereafter acquire, wherever situate; and also all the incomes, rents, issues, tolls, profits, receipts, rights, benefits, and advantages had, received, or derived by the party of the first part from any of the thereby-conveyed premises.

And by its said deed said railroad company covenanted with and to its said grantees and their assigns that it was lawfully seized of all the granted property, had good right to convey the same, that the same was free from incumbrance, and that the title thereto it would warrant and defend against all lawful claims; and by said deed it was further agreed, covenanted, and provided as follows:

68 "Third. In case default shall be made by the party of the first part in the payment of any of the sums specified in the interest coupons annexed to said bonds, or in any of the principal sums specified in said bonds, and shall continue for thirty days after said sums or any of them become due and payable, then and thereupon the said principal sums in all said bonds specified shall immediately become due and payable, and thereupon the parties of the second part, upon the written request of the holders of a majority of said bonds, shall enter upon and take possession of all and singular the charter, franchises, and property hereby conveyed, and shall and may, on a day and at a place in the city of Little Rock to be by them appointed, sell the same to the highest bidder for cash in hand, first, however, giving thirty days' notice of the time and place and terms of sale by advertisement printed in a newspaper published in the city of Little Rock and in a newspaper published in the city
69 of New York, and the proceeds, after defraying the costs and expenses of this sale, they shall apply to the payment and discharge of all sums of principal and interest then due and unpaid on

such bonds, and the residue they shall pay to the party of the first part or its assigns; and in case of such sale the party of the second part shall and may convey the property so sold to the purchaser, which deed shall convey all the title of the party of the first part to such property to the grantee therein, and, in case of such sale, the party of the first part hereby expressly waives and relinquishes all right to redeem such sold and conveyed property which it may or might have under the laws of the State of Arkansas.

Fourth. In case either of the parties of the second part should die or resign or become for any reason unable to execute the trusts of this deed or any of them, then all the trusts of this deed may and shall be executed by the survivors or survivor of them, and
70 if all should die, resign, or become otherwise unable to execute said trusts or any of them the holders of a majority of said bonds may, by a writing under their hand, appoint another person or persons trustee of this deed, and all the trusts hereof shall and may be executed by the trustees so appointed as fully as they might or could have been by the parties of the second part or either of them, and with like effect."

Said deed was duly delivered to the grantees therein named, and the trusts thereof were duly accepted by said grantees, and said deed was duly and properly recorded in the recorder's office of the various counties of the State of Arkansas in which the described and conveyed property, or any part of it, was situate; all of which appears by a true and complete copy of said deed herewith filed, marked "A," and made a part of this bill.

Complainants charge that said deed constitutes and is the first lien upon all the premises therein conveyed, and should be
71 so declared, and should be held to be prior to any other charge or lien of any kind or character upon said conveyed premises.

Orators state further that after the execution of said deed the said William S. Pierson, one of the grantees and trustees in said deed named, died, and that no successor to him in his trust has been named or appointed, and that upon his death the title to all of said conveyed property vested in his co-grantees and trustees, defendants Dow and Matthews, and the trusts of said deed devolved upon them.

They further show that on or after the maturity of one or more of the instalments of said bonds time for payment of the principal thereof was by agreement between the holders of said bonds and said railroad company extended for various periods not necessary to be stated, but that, save that the holders agreed to accept some reduced rates of interest, such extension was had and consented to without change of the provisions or detriment to the validity
72 of the trusts of said deed for assuring payment thereof, and without change of the obligation of said railroad company to pay the agreed interest upon the days named, and without change or abandonment of the right of the holders of said bonds, in default of payment of interest continued for thirty days, to declare the principal sums named in their bonds immediately due and payable, and to have foreclosure of the trusts of said deed and sale of the con-

veyed property for immediate payment of the principal and accrued interest of such bonds.

Complainants further show that they are the holders of said bonds in number and amount as follows—that is to say:

Complainant, The Equitable Life Assurance Society of the United States, is the holder of fifty-six of said bonds, being in the aggregate fifty-six thousand dollars; complainant, Alanson Trask, is the holder of nineteen of said bonds, being in the aggregate nineteen thousand dollars; complainant, M. F. Monroe, is the holder of nineteen
73 of said bonds, being in the aggregate nineteen thousand dollars; complainant, Henry G. Marquand, is the holder of nineteen of said bonds, being in the aggregate nineteen thousand dollars, and complainant, Daniel W. McWilliams, is the holder of eighteen of said bonds, being in the aggregate eighteen thousand dollars, all which bonds were purchased by their respective holders for value before maturity; they further show that an instalment of interest upon their said bonds and upon all others of the same issue matured and became payable upon the first day of November, 1882, and that the said railroad company failed and neglected to pay the same or any part thereof, and that such default has continued for more than thirty days—that is to say, from the said first day of November, 1882, to the present time; wherefore your orators are entitled to declare and do declare the principal sums mentioned in their said bonds to be due, and are entitled to demand and do demand payment of the principal sums therein specified, with
74 all interest thereon accrued. Orators further show, on information and belief, that the defendant, The Memphis and Little Rock Railroad Company is totally insolvent; that its debts, obligations, and liabilities and the liabilities of its property largely exceed the value of its property of every character, and that they have no means of compelling payment of the sums due them, save by enforcement of the lien and trusts of said deed.

Orators further show that both the surviving trustees of said deed, defendants R. K. Dow and Watson Matthews, have placed themselves and are now in attitude of hostility to your orators and other holders of said bonds and to their interests, and that orators cannot safely call upon them to represent their interest by seizure and sale of the conveyed premises nor can orators safely trust them or either of them to represent their interests in a suit for foreclosure of said deed for their payment.

75 They show that after the execution and delivery of the aforementioned bonds and deed by the defendant railroad company and after the acceptance of the trusts of said deed by the said Dow and Matthews the said railroad company issued and executed its other bonds subsequent and subordinate to the bonds held by orators to the amount of twenty-six hundred thousand dollars, and that to secure payment of said subsequent bonds said railroad company, by its deed dated May 2nd, 1877, conveyed all the same premises to the same persons, said William S. Pierson and defendants Dow and Matthews, in trust to sell and convey upon certain defaults in said deed set forth.

Orators have obtained and herewith exhibit a copy of said deed, marked "A 2," which they make part of this bill and to which they crave leave to refer.

Said Pierson and defendants Dow and Matthews, as orators are informed and believe, accepted the trusts of said last-named deed, and afterwards, said Pierson having died, one Charles Moran, who is not sued herein, was duly appointed trustee thereof in his stead, and he, with said Dow and Matthews, are now the trustees thereof,

76 and that they are all, as such, in many ways acting inimical to the interests of orators and of other holders of said first-named bonds.

After their acceptance of the trusts imposed upon them by the deed above mentioned a decree was rendered by the supreme court of the State of Arkansas condemning part and but part of the property so conveyed for your orators' security for sale, for payment of a demand held by said State of Arkansas against a former owner of parts of the conveyed premises and foreclosing a mortgage claimed to be held by the said State, executed by such former owner upon parts of the conveyed premises.

Shortly after the rendition of said decree by said supreme court said Dow and Matthews, in concert with said Moran, and acting as trustees of the deed of May the second, 1877, and not as trustees of the first above-named deed, by which payment of orators' bond was

77 secured, and without consultation with your orators, intervened in the said matter and paid the amount of the decree so rendered by the supreme court of Arkansas, with all the costs thereof, amounting to two hundred and thirty-nine thousand six hundred and $\frac{71}{100}$ dollars. Immediately thereafter said Dow, Matthews, and Moran, as trustees of the deed of May the second, 1877, exhibited in this court their bill in equity against the defendant, The Memphis and Little Rock railroad, as reorganized, in and by which they claimed and asserted that the amount so adjudged by the said supreme court of said State of Arkansas and paid by them was a lien upon all the premises conveyed in the deed of May the first, 1877, and was prior to the lien both of the deed of May first, 1877, by which payment of orators' bonds were and are secured, and of the last-named deed of May the second, 1877, and thereby prayed to be subrogated to the lien of the State of Arkansas upon said premises, and to have a decree against the Memphis and Little

78 Rock railroad, as reorganized, for the amount by them so paid, which decree should be prior in lien to the deed of May first, 1877, upon the premises therein conveyed; and also that the income of the defendant railroad company should be applied to their reimbursement to the exclusion of the prior rights of orators' and their co-bondholders to the first reception of such income. The said Dow, Matthews, and Moran did not make your orators or any holder of any bonds issued and secured by the deed of May 1st, 1887, or any one who could represent their interest, defendant's to said bill; nor did they or any of them give to your orators or any of them notice of the pendency of their said bill, or

give to your orators or either of them any opportunity to intervene in said suit for their own protection.

In the said cause, the same being prosecuted to decree, it was by this court, in the absence of orators and of every or any one representing their interest, decreed that the amount so paid by said
79 Dow, Matthews, and Moran was a lien upon all the *the* premises conveyed in the deed of May 1st, 1877, prior to any conveyance thereof made by the railroad company, including its said deed of May 1, 1877, and it was decreed that said sum be repaid out of the income of defendant railroad company in subordination to the lien of the deed of May 2nd, 1877, and without regard to the deed of May first, 1877, or the rights of your orators. Said decree is not yet entered, but counsel for said Dow, Matthews, & Moran has shown a draft of the decree he demands to counsel for orators, which is in effect as stated; and orators charge that the decree demanded and sought is in effect as herein stated. Orators charge that the allegation made by the said Dow, Matthews, and Moran in their said bill to the effect that the amount so by them paid to the State of Arkansas was properly a charge or lien upon all the premises conveyed by the lien of May 1st, 1877, was not true in point—fact, and they submit that not having been parties to that suit they are not in any manner precluded by the decree therein, but that if the complainants in that cause or any other person seeks, or may hereafter seek, to interpose that decree in the way of your orators' ob-
80 taining full and sufficient relief, that your orators are entitled and they ask leave to contest the validity of said decree as a lien prior to their own, and to show, if they can, that it is not in any manner prior to the lien of the deed of May 1st, 1877, by which the payment of their said bonds is secured, and to show that they are entitled to the payment of the amount of their said bonds and the interest thereon accrued in priority to and without regard of said decree. And they distinctively charge and say that the subsisting lien of the State of Arkansas was not a lien upon all the premises conveyed in the deed of May 1st, 1877, and that the decree of this court in the cause last mentioned was in holding the said lien to be prior upon all said premises erroneous; and should said decree be found in way of their full relief they ask to be allowed by amendment to make proper parties, if any other be necessary, and to contest said decree, and to show the invalidity thereof as against them and their co-bondholders.

81 Your orators further show, upon information which they believe to be true, that the holders of the bonds of said railroad company so as aforesaid issued subsequent and subordinate to those held by your orators and secured by the deed of May 2nd, 1877, above mentioned, claim that the defendant, The Memphis and Little Rock Railroad Company, as reorganized, has made default in the payment of the instalments of interest maturing upon said last-named bonds, and they show, as appears by the records of this court, that their said trustee, R. K. Dow, has brought suit upon the law side of this court against said Memphis and Little Rock Railroad Company, as reorganized, upon a number of coupons cut and

taken from the said subsequent and subordinate bonds, and therein seeks to recover judgment against said Memphis and Little Rock railroad, as reorganized, for the amount specified in said coupons, and they also show and charge that said R. K. Dow well knows that the said defendant, The Memphis and Little Rock Rail-
82 road Company, as reorganized, has no property, income, or effects which is not conveyed by the deed of May 1st, 1877, for the security of your orators' bonds, and he well knows that any execution upon any judgment which may be rendered in his favor upon said coupons can only be satisfied by a levy upon and seizure of the property conveyed to himself as trustee for the security of your orators. Orators also charge that the said R. K. Dow has incited various other parties, holders of said subsequent and subordinate bonds, to bring other suits at law in this court, as appears by the records thereof, against the said Memphis and Little Rock Railroad Company, as reorganized, upon coupons taken and cut from the said subsequent and subordinate bonds, and that he has done this well knowing that executions upon any judgment rendered in his own favor or of any other persons who bring such suits can only be satisfied by levy and seizure of property conveyed to himself for the security of your orators. And your orators charge that
83 it is the intention of the said R. K. Dow and of those whom he has thus incited to bring such suits upon the recovery of judgements to issue execution and to levy upon and seize parts of such property and thereby to deprive your orators of the benefits of their security.

For the reasons, therefore, that their said alleged trustees, the defendants Dow and Matthews have prosecuted their said claim for subrogation to the rights of the State of Arkansas against all the property and premises conveyed to him in trust for the security of your orators without giving your orators notice of the prosecution of said suit and without making them parties thereto or giving them opportunity to defend for their own interest, and have in such clandestine manner secured a decree condemning all of the premises conveyed by the deed of May 1st, 1877, when, as orators distinctly charge, only part thereof ever was, either in right or law, subject to the lien of the mortgage held by the State of Arkansas, and have also, in violation of orators' rights, sought and procured a
84 decree intercepting the income of the defendant railroad company before it reaches your orators and applying it to payment of another demand in priority to the deed of May 1st, 1877. Your orators charge that said Dow and Matthews have violated their trusts and duties towards your orators, and your orators are entitled in equity to prosecute this cause for themselves, or to have said Dow and Matthews removed and discharged as trustees of May 1st, 1877, and to have other trustees appointed in their stead to execute the trusts of said deed. And they also charge that the said R. K. Dow, having brought and caused and incited to be brought the suits at law aforementioned upon claims subordinate to the demand of your orators, knowing and intending to seize the property conveyed to himself in trust for payment of their bonds, has further and in

the grossest manner violated his trust and disregarded his duties to your orators. Your orators charge that the said Dow and Matthews have voluntarily placed themselves in a position hostile to the interests of your orators, and that by their own
85 actions they have placed themselves where they cannot prosecute your orators' rights, and that for these reasons your orators cannot trust them with the enforcement of their rights in the premises. Orators believe and charge that if allowed to bring and control this suit said Dow and Matthews would refuse to contest the validity of any part of the decree so by them obtained and would so manage as to greatly hinder and delay orators in obtaining their just rights. For these reasons orators have not asked said Dow and Matthews to bring or prosecute this suit; and your orators further say that their trustees, the said defendants Dow and Matthews, having so placed themselves in a position wholly inimical to the interests of your orators, that unless your orators are allowed to prosecute this action themselves and in their own behalf against all the defendants herein named they are wholly remediless, and that their rights and interests must be and will be sacrificed.

86 To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed and may, according to the best and utmost of their respective knowledge, remembrance, and belief, but not upon oath, their oath being hereby expressly waived, full, true, direct, and perfect answer make to this bill and to the several interrogatories hereinafter numbered and set forth—that is to say, the Memphis and Little Rock Railroad Company, as reorganized, answer and say:

1. Whether it did not execute the bonds and deed first hereinabove mentioned, and whether it has any property and effects other than that by said deed conveyed.

2. Whether it did not make default in the payment of the interest maturing thereon on the first day of November, 1882.

3. Whether said default has not continued to the present time.

4. Whether said deed of May 1st, 1877, was not the first lien upon the premises therein conveyed; and, if not, why it was not.

87 And that the defendants, Watson, Matthews, and R. K. Dow, answer the above interrogatories propounded to the Memphis and Little Rock railroad, as reorganized, and also answer and say:

1. Whether they did not accept the trust of the said deed of May 1st, 1877.

2. Whether they did not also afterwards accept the trust of the said deed of May 2nd, 1877.

3. Whether the premises conveyed in both said deeds are not the same, and whether the said deed of May 1st, 1877, was not a prior lien upon the premises therein conveyed to the deed of May 2nd, 1877.

4. Whether they did not in concert and conjunction with said Moran, prosecute the aforementioned suit against the Memphis and Little Rock Railroad, as reorganized, in and by which they claim to be subrogated to an alleged lien of the State of Arkansas upon all

the premises conveyed in said deed of May 1st, 1877, for their repayment of the sum paid by them to the said State of Arkan-
88 sas, and whether they did omit to make the holders of the bonds secured by the deed of May 1st, 1877, parties to said suit, and whether in said cause they did not procure a decree as prayed by them and as above herein stated.

5. Whether they do not now claim and insist that the decree so by them obtained is a lien upon all the premises conveyed in the deed of May 1st, 1877, prior to the lien of that deed, and also that they have the right themselves to take the income of the defendant railroad company for satisfaction of said decree prior to and in exclusion of the rights of complainants to have and take such income.

And that said R. K. Dow answer and say:

1. Whether he has not brought suit at law against the Memphis and Little Rock Railroad Company, as reorganized, upon coupons taken from said subsequent and subordinate bonds.

2. Whether he has not advised or incited others to bring such suits against said company upon coupons taken from said
89 subsequent and subordinate bonds; and, if so, give the names of such parties.

3. Whether when asked by holders of each subsequent and subordinate bonds what they should do to compel payment of the interest accrued and unpaid upon their bonds he has not told such persons that he himself had brought such suits at law; and, if not, whether he has been asked such or like questions and what was his answer.

4. Whether he does not know that the said Memphis and Little Rock railroad, as reorganized, has no other property or effects or income save such as is conveyed to himself and his cotrustees by the deed of May 1st, 1877, for the security of your orators and their co-bondholders, and if he says said railroad company has any other property or effects to state and show of what such property or effects consist, giving a full description thereof and stating where the same and each item thereof is situated.

5. Whether it is not his intention upon obtaining judgment to issue execution and levy upon and seize parts of the property
90 so conveyed to him in trust for receiving payment of orators for satisfaction of any judgement he may obtain against said company.

And that upon hearing the amount due your orators upon their said bonds, with all interest thereon accrued, and the amount due any holder of bonds of the same issue who may come in and make himself party to this suit be ascertained, and that unless the same be paid upon a short day in the decree to be named that the lien of the said deed of May 1st, 1877, executed for the security of payment of said bonds be enforced and the said deed foreclosed; that the property therein conveyed be sold by a commissioner appointed for that purpose, free and discharged from all liens and particularly from the lien of the decree so obtained by the said Dow and Matthews; that, if necessary for enforcement of your orators' rights or protection against disturbance or seizure of the property pledged and con-

veyed for their security by executions at law, a receiver be
91 appointed to take and operate said railroad and all other premises in said deed conveyed until the same can be sold; that if necessary said Dow and Matthews be removed and discharged as trustees of said deed and other and impartial trustees thereof appointed, and that your orators may have such further and other relief as in equity is meet and proper.

And will it please your honors to grant that writs of subpœna be issued directed to the said Memphis and Little Rock Railroad Company, as reorganized, and to the said R. K. Dow and Watson Matthews, commanding them to appear on a day thereon mentioned and to make answer hereto.

And as such your orators will ever pray.

B. C. BROWN,
For Compl'ts.

92 On June 1st, 1883, was filed an amended bill of complaint and exhibits thereto.

Amendment to Bill.

The Circuit Court of the United States, Eastern District of Arkansas.
In Chancery.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, Alanson Trask, Virginia M. F. Monroe, Henry G. Marquand, and Daniel W. McWilliams, Complainants,

v.

THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as Reorganized, ROBERT K. DOW, and WATSON MATTHEWS, Defendants.

To the honorable the judges of the circuit court of the United States for the eastern district of Arkansas:

Your orators in the above-entitled cause now pending in this honorable court, by way of amendment and supplement to their said original bill, not in any way abandoning any matter or state-
93 ment in said original bill, but reiterating and repeating the same and relying thereon, and for an amendment and supplement to their said original bill, in addition thereto, state and show that after the execution and delivery of the bonds now held by your orators and others, and after the execution and delivery of the deed by which the payment thereof was secured, as stated in their said original bill, the said Memphis and Little Rock Railroad Company (as reorganized), on May 2nd, 1877, executed and delivered its certain other bonds, 2,675 in number and amounting in the aggregate to $2,600,000.00, to divers persons to orators unknown, which said bonds are, as orators are informed and believe, now outstanding, and are held some by the persons hereinafter named and others by persons to your orators unknown. Orators state that said bonds were in usual form, were payable on July 1st, A. D. 1907, and bore interest from date till July 1st, 1882, at the rate of four per centum

per annum, and afterwards at the rate of eight per centum
94 per annum, payable semi-annually on the first days of January and July in each year, and that for the instalments of interest coupons were to said bonds attached and by said railroad company executed and delivered.

Orators also show that each said bond contained a stipulation or agreement on the part of said railroad company that if default should be made by said railroad company for sixty days in payment of the interest coupons to such bonds annexed that the principal sum mentioned in each of such bonds should immediately become due and payable.

Orators further show that, by its said deed dated May 2nd, 1877, the defendant railroad company conveyed all its charter, property then owned or thereafter to be acquired, and all its income to William S. Pierson, Watson Matthews, and Robert K. Dow, upon trust to sell and convey, upon default of said railroad company in payment of either of the sums mentioned in said bonds or in the annexed coupons, all of which appears, reference being had to a true
95 and complete copy of said deed (which contains a copy of said bond) filed with orators' original bill, marked "A 2."

Orators show that said last-mentioned bonds and deeds were executed and delivered after the execution and delivery of the bonds held by your orators, and of the deed of May 1st, 1877, by which payment of orators' bonds were secured, and that said deed of May 2nd, 1877, constituted nothing more than a second mortgage of the premises therein mentioned, the deed of May 1st, 1877, being the first mortgage thereof. This was fully understood and known at the time of the execution of both the said bonds and deeds, and that always to show this the deed of May 1st, 1877, by which orators' bonds were and are secured, was called the "preference mortgage" and the deed of May 2nd, 1877, securing said $2,600,000.00 bonds was called the "general mortgage," and by these names they will be called hereinafter; and also upon each of the bonds of May 2nd, 1877, was endorsed the statement that the mortgage by which
96 they were secured was made subject to a prior mortgage for $250,000.00, by which was meant the preference mortgage by which orators' bonds were and are secured, which endorsement was notice to all holders of said bonds of the prior rights of your orators.

Orators further show that the said general mortgage conveys the self same and identical premises which were conveyed by the preference mortgage, and that the said railroad company has no property, effects, or income save such as was conveyed by said preference mortgage, and that orators and their co-bondholders have a first lien upon all the property, effects, and income owned, held, claimed, or purchased by the defendant railroad company.

Orators further show that after the execution of the said general mortgage William S. Pierson, one of the grantees and trustees thereof, died, and one Charles Moran was by the court duly appointed trustee of said general mortgage in his place and stead, and that

said Moran and the defendants, Watson, Matthews, and Robert K. Dow, are now the trustees thereof.

97 They further show, upon information and belief, that the defendant railroad company made default in payment of the coupons annexed to the general mortgage bonds which matured upon July 1st, 1882, and January 1st, 1883; that the aggregate amount of the coupons which matured July 1st, 1882, was $52,000.00, and that the aggregate amount of coupons which matured January 1st, 1883, was $104,000.00.

Orators further show that a number of persons whom orators suppose to be holders of said second or general mortgage bonds have brought separate suits at law in this court against railroad company upon coupons taken from said second or general mortgage bonds to recover the amount in said coupons specified, and that lately, at the April term, 1883, said railroad company making no defense, such persons, by default and by the judgement and consideration of this court, obtained and have judgement against the said railroad

98 company for the several sums mentioned in the coupons sued upon, all of which appears of record. Orators have obtained and herewith file, marked "A 3," a copy of one of the complaints upon which such judgements were obtained, and aver that all the others are of like tenor and effect. They also file herewith a schedule giving the names and residences (as shown by their complaints) of all the persons who have brought said suits and recovered said judgements, the dates of the coupons sued upon, the number of the bond from which each was taken, and the date and amount of the judgement rendered in favor of each, which they aver to be correct and which they mark "A 4" and make a part of this bill.

The aggregate amount of said judgements is $—, of which $— is based upon coupons which matured July 1st, 1882, and $— is based upon coupons which matured January 1st, 1883. Orators have caused diligent inquiry to be made, and have found no suit

99 or judgement brought by any one upon any of the said coupons which matured as aforesaid save those in said schedule mentioned, and they aver that no other has been brought, and that said judgement only embrace part of the said matured coupons. Among those who have brought such suit are R. K. Dow and Charles Moran, two of the trustees of said general mortgage, the said Dow being also one of the trustees of the preference mortgage, by which orators' bonds are secured.

Orators are further informed and state — in May, 1882, the defendant railroad company exhibited its bill in chancery against said Dow, Matthews, and Moran and against the takers and holders of its general mortgage bonds in the circuit court of the United States for the southern district of New York, in and by which it alleged and charged that its said bonds were issued without consideration, and that such bonds and the said mortgage deed of May 2nd,

100 1877, by which they were secured were illegal and void and prayed their cancellation; that to their bill the defendants appeared and the said trustees answered thereto, and that said suit

is still pending in said court. They have obtained and herewith file as exhibit- copies of said bill and answer.

They further show that, on or about April 26th, 1882, said Dow, Matthews, and Moran, as trustees of said general mortgage deed, filed in this court their bill in equity against the defendant, The Memphis and Little Rock Railroad Company (as reorganized), stating that they had paid off and discharged a judgement rendered by the supreme court of Arkansas in favor of the State of Arkansas against defendant, which judgement they allege to be a lien upon all the property of defendant prior to any conveyance thereof by defendant, and praying for their reimbursement to be subrogated to the liens and rights of the State of Arkansas. To this bill defendant answered alleging the illegality and invalidity of said general
101 mortgage, and also in the same cause filed a cross-bill alleging that its said $2,600,000.00 bonds were issued without consideration, and that such bonds and the said general mortgage were illegal and invalid. In said cause decree final was rendered on the — day of ——, 1883, dismissing defendant's cross bill and rendering decree against it according to the prayer of the original bill, from which decree defendant has appealed to the Supreme Court of the United States; all which last-named proceedings are of record in and known to this Court.

Orators see that by the decree in said cause the said Dow, Matthews, and Moran waive any claim of priority to or over either the preference mortgage or the general mortgage by reason of which waiver orators and their co-bondholders have an undoubted and undisputed first lien upon all the charter, franchises, and property of said railroad company of every nature and character, and the
102 first lien upon and prior right to receive all the incomes of said railroad company.

Orators are informed and state that in a certain cause in chancery now pending in this court, wherein one Russell Sage is complainant and the said Memphis and Little Rock Railroad Company (as reorganized) (defendant herein) is defendant, all of the property, effects, and income of said defendant railroad company has been taken and are now in the possession of this court, by its receiver, and that this court, through its receiver, is now operating the railroad of said railroad company. Orators aver that the bill in that case is based upon a judgment rendered by this court in favor of said Sage against said railroad company on June 24th, 1882, for $—, and they further aver that the debt due said Sage for and upon which said judgment was rendered was and is but a floating and unsecured debt of said railroad company, and that the lien of your orators and co-bondholders upon the property and income of
103 said railroad company and their right of payment out of and from said property and income is prior to any liens or rights said Sage may have acquired by his judgment.

Orators further aver that it is the intention of the persons in said schedule named who have recovered judgements against said defendant railroad company, so soon as said receiver is removed and they may lawfully do so, to sue out executions of their said judgements,

and to cause the same to be levied upon and therewith to seize and take from the possession of said railroad company all or material parts of the property so by it conveyed for security of your orators and their co-bondholders and to remove the same and convert the same or the proceeds of the sale thereof to their own use, and also by garnishments and the like proceedings to seize and convert to their own use the income of the said railroad company in utter disregard of the prior right of your orators and their co-
104 bondholders, and they say that if said receiver is discharged said Sage will do the same.

Orators submit that with all these actions affecting the property of said railroad company, the lien thereon, and the rights of various creditors and of various classes of creditors pending that neither orators nor any one desiring to purchase the property can know what will be finally adjudged, what equities may be evolved, nor to what liens the property may in the end be subjected, and that consequently at a sale of the property and franchises of any part thereof no one could understandingly bid for or purchase any of such property or franchises, and they submit that as they have an undoubted and undisputed right to reception of the net income of said defendant railroad company, that a sale of the said franchises and property or of any part thereof is not, as orators submit,
105 advisable or to the interest of any one concerned.

Orators show that the property of said defendant railroad company, besides a few tracts of almost valueless lands, insufficient in value, as they are informed and believe, for payment of a tenth part of the sum due orators, consists of nothing but a railroad, with locomotives, cars, and other rolling stock necessary for its operation; that said property, if kept together and operated as an entire property in its legitimate business of the carrying of persons and freights, is productive, and, if so operated, its net income, after making all allowances for operating expenses and all renewals and repairs necessary for the preservation of the property, will, within a reasonable time, pay interest and principal of the bonds held by orators and their co-bondholders and all prior liens, if any be found to exist, and will leave the corpus of the property for security
106 and payment of the bonds secured by said general mortgage and other debts owing by said railroad company. It is not the wish of orators to injure or embar-ass any junior creditors of said railroad company. They seek nothing to which their contract and the principles of an enlightened equity does not entitle them, desiring that others shall not, by converting the ple-ged property or destroying its productive value, hinder or embar-ass them in collection of the sums due them; neither do they desire to injure in any manner those whose liens and demands are subsequent to their own.

That all may be paid, and that the body of the property may be preserved in productive shape, uninjured and not separated, disrupted nor lost, they are willing, and hereby offer, if the net income is secured to be paid to them, to waive sale and to await for and accept payment out of such net income as received. The levy of executions at law upon any part of the property of said railroad

company, or any interception of the net income of said railroad company, would greatly damage orators, and for such damages they would have no remedy.

Orators further show that said Russel Sage is a citizen of the State of New York, and they further show that fifteen of the twenty-three creditors who have brought suit upon said general mortgage coupons, and who have recovered judgements thereon, to wit, Edward W. Barnes, Helen Juillard, Elizabeth C. Stokes, Mary E. Dodge, Augustus D. Juillard, George E. Dodge, W. B. Miller, Wm. Chamberlain, Henry Sanford, Henry L. Sheldon, L. Levy, W. G. Wheeler, F. H. Cossitt, Charles Moran, and G. T. Bonner & Co., are also citizens of the State of New York. Four of your orators are also citizens of the State of New York, and consequently they cannot make any of said last-named judgement creditors parties hereto for this reason—they cannot ask this court to restrain levy of executions upon property pledged to them nor to restrain the absorption of the income by said creditors. To make those judgement cred-

108 itors who reside in other States parties and ask injunctions against them would serve no useful purpose, as those who cannot be made parties and who could not be thus restrained would sue out executions, and thus orators and their co-bondholders would be irremediably damaged, nor can orators resort to any other court for relief, because no other court has jurisdiction to restrain the execution of judgement of this court.

As shown on orators' original bill, and as they again aver, one of the trustees of the preference mortgage by which orators' bonds are secured, Robert K. Dow, who is a defendant herein, has himself brought suit at law upon a number of said general mortgage coupons and has obtained judgement against said railroad company for the amount thereof, and has also, as orators are informed and believe and charge, incited others who have sought aud obtained judgements upon said coupons to do so, and orators aver that he has recovered such judgements and incited others

109 to recover like judgements with intent by execution to seize and convert the said property and income or material parts thereof to his and their own use; said Dow being thus engaged in a direct attempt to injure his beneficiaries, your orators, a request to him to intervene and protect your orators against this threatened and impending injury would manifestly be migratory. Being thus remediless, orators, since the rendition of said judgements, through and by counsel, applied to Watson Matthews, the sole other surviving trustee of said preference mortgage (William S Pierson being dead, no trustee thereof having been appointed in his stead), and informing him of the rendition of said judgements and of the injury and wrong sought to be perpetrated upon them by means thereof, and offering him any and proper desired indemnity, requested and demanded him to interfere and by proper suit to prevent such injury. Said Matthews is a citizen of the State of New Jersey, and at his suit the court would have

110 had jurisdiction of an action against all said judgement creditors, all of whom, as appears from the allegation of their

several complaints, are citizens of States of the United States other than New Jersey; but in response to their said request and demand said Matthews answered that he had given to said Robert K. Dow a power of attorney to act for him as trustee and had signed other papers, the contents of which he did not disclose, which precluded him from bringing any suit against said Dow or said judgement creditors, and then positively refused to bring any suit or to intervene in any way for the protection of your orators. Your orators are therefore wholly remediless unless they can be protected by this court, taking all the properties and incomes into its possession or by its continuing its present possession thereof and thus preventing the serious impending wrong and injury. As before stated, all the said premises are now in the possession of this court, through its receiver, in the case of Russel Sage *v.* Said Railroad Com-
111 pany, and orators aver that this possession by the court is all that prevents the irremediable infliction of the intended wrong.

Orators further show that Charles Moran, one of the trustees of said general mortgage, is also a citizen of the State of New York, and for this reason cannot be made party hereto. They show, however, that Robert K. Dow, one of the other trustees of the general mortgage, is a citizen of the State of New Hampshire, and that the third trustee, Watson Matthews, is a citizen of the State of New Jersey; and they say that said Dow and Matthews, as trustees of said general mortgage, can sufficiently protect all interests accruing under said general mortgage, and that it is not necessary that said Moran should be a party. They say that they have already made said Dow and Matthews parties as trustees of said preference mortgage, and they now, by this amendment, make them both as trustees of said general
112 mortgage parties defendant thereto, and pray that they may be so considered, and that they may be required to answer, but not under oath, their oaths being expressly waived, all the matters, allegations, and statements of orators' original and of this their amended bill as fully as though each were here again repeated and they thereunto specially interrogated.

And, the premises considered, they pray that your honors will order and direct that the receiver of this court heretofore appointed in the said cause of Sage against the said railroad company continue to hold and operate the same, but as the receiver of this court in this cause, and that the court will from time to time make all necessary and proper orders for the operation and preservation of said railroad and other property, and will require such receiver, under the orders of the court, to pay the net income received to your orators and their co-bondholders until their full sums of principal and accrued and accruing interest be paid them, and that your
113 orators may have all further or other proper relief, and that writs of subpœna be issued directed to said Robert K. Dow and Watson Matthews, commanding them, &c.

B. C. BROWN,
For Complainants.

UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

B. C. Brown, being duly sworn, says he is counsel for complainants in above-entitled case, who are all absent from this State, and that the matters and things in the original and in this amended bill stated as of knowledge are true, and that those stated on information he believes to be true.

—— ——.

Sworn and subscribed to before me this — day of May, 1883.

—— ——.

EXHIBITS A 3 and A 4.

In the Circuit Court of the United States for the Eastern District of Arkansas.

R. K. Dow, Plaintiff,

v.

THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as Reorganized.

114 The plaintiff states that he is a citizen, &c.

That on the 2nd day of May, 1877, the defendant duly executed and delivered to a third person its certain interest coupon attached to a bond of that date, of which coupon the following is a copy:

"On the first day of July, 1882, the Memphis and Little Rock Railroad Co., as reorganized, will pay to the bearer, at the office of the Central Trust Company, in the city of New York, twenty dollars, being six months' interest, due on that day, on bond No. —.

"JOHN W. GOODWIN, *Treasurer.*"

That plaintiffs are the lawful holders and owners of the above coupon, and also of the following coupons, of the same form, tenor, and effect as the above:

Coupons due July 1, 1882.

Coupons due January 1, 1883, from the same — bonds, each for twenty dollars.

The plaintiff acquired said coupons in due course of trade, before maturity, for valuable consideration and without notice of any defense thereto.

Wherefore, &c.

U. M. & G. B. ROSE,
For Pl'ff.

115 Schedule of judgments against the Memphis and Little Rock Railroad Co., as reorganized, rendered by the U. S. circuit court for the eastern district of Arkansas, on coupons taken from the general mortgage bonds:

1. R. K. Dow, New Hampshire, coupons due July 1, '82, numbered 801 to 834, 904, 905, 995, 996, 997, 998, 1179, 1180, 1181, 1182, 1183, 1193, 1194, 1195, 1196, 1197, 1198, 1200, 1261 to 1279, 1409,

1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1443 to 1467, 1570 to 1585, 1963 to 1967, 2023 to 2037, 2051, 2052, 2283 to 2287, 2603, 2604, 2609.

Rendered Ap'l 17, 1883; amount, 4,506.80.

2. Ira Colby, New Hampshire, coupons due Jan. 1, 1883, numbered 984 to 988, 990 to 994, 1170, 1176, 1177, 1178, 1184 to 1192, 1260, 1379, 1380, 1832, 1383, 1386 to 1395, 1400 to 1405, 1485 to 1488, 1490, 1519 to 1541, 1547, 1697, 1725, 1726, 2623, 2624, 2639 to 2641, 2643, 2648, 2649, 2650, 2658, 2664, 2673.

Rendered Ap'l 17, 1883; amount, 3,175.64.

3. Wm. Clark, New Hampshire, coupons due Jan. 1st, '83, numbered 94 to 135, 142 to 163, 851 to 856, 861 to 864, 883, 885, 887, 901, 902, 903, 1201 to 1208, 1223 to 1236, 1249, 1250, 1302 to 1313, 1947, 1948, 2269.

116 Rendered Ap'l 17, 1883; amount, 4,884.80.

4. Wm. Buck, New Hampshire, coupons due Jan. 1, 1882, numbered 1951, 1996, 2341, 2342, 2345, 2369, 2370, 1501 to 1992, 1656 to 1660, 1697 to 1724, 2016 to 2022, 987, 1381, 1384, 1385, 1396 to 1399, 1482, 1483, 1484, 1489, 1727 to 1731, 1949, 1995, 2038, 2303, 2304, 2343, 2344, 83 to 94.

Rendered Ap'l 18, 1883; amount, 3,705.52.

5. Edw. W. Barnes, New York, coupons due July 1, 1882, numbered 405, 406, 472, 473, 848, 973, 994, 975, 976, 977, 1092, 1852, 2090, 2092, 2093, 2094, 2095, 2133, 2206, 2207, 2208.

Same numbers due Jan'y 1, 1883.

Rendered Ap'l 21, 1883; amount, 1,419.33.

6. Helen Juilliard, New York, coupons due July 1, 1882, numbered 301 to 375.

Same numbers due Jan. 1, 1883.

Rendered Ap'l 19, 1883; amount, 4,626.75.

7. Elizabeth C. Stokes, New York, coupons due July 1, 1883, numbered 376 to 400, 601 to 650.

Same numbers due Jan. 1, 1883.

Rendered Ap'l 19, 1883; amount, 4,626.75.

8. Mary C. Dodge, New York, coupons due July 1, 1882, numbered 651 to 725.

Same numbers due January 1, 1883.

Rendered Ap'l 19, 1883; amount, 4,626.75.

117 9. Augustus D. Juilliard, New York, coupons due July 1, 1882, numbered 726 to 800. Same numbers due Jan'y 1, 1883.

Rendered Ap'l 19, 1883; amount, 4,626.75.

10. Geo. E. Dodge, New York, coupons due July 1, 1882, numbered 296, 297, 436 to 440, 299, 300, 402, 403, 404, 475, 476, 477, 484, 499, 500, 886, 889, 928, 930, 944, 978, 979, 980, 1046, 1222, 1569, 1841, 1842, 1843, 1844, 1855, 1932, 1933, 2039, 2050, 2061, 2062, 2063, 2064, 2065, 2188, 2189, 2190, 2201, 2202, 2203, 2204, 2205, 2291, 2292, 2293, 2295, 2302, 2309, 2310, 401.

Rendered Ap'l 19, 1883; amount, 3,763.09.

11. W. B. Miller, New York, coupons due July 1, 1882, numbered 907, 1005, 1006, 1007, 1008, 1009, 1853, 1854, 1856, 2066, 2067, 2068, 2069, 2070, 2196, 2197, 2198, 2199, 2200.

Rendered ——; amount, ——.

12. Wm. Chamberlain, New York, coupons due July 1, 1882, numbered 478, 494, 495, 846, 963, 1074, 1093, 1094, 2097, 2098.

Rendered Ap'l 19, 1883; amount, 678.48.

13. George Dow, New Hampshire, coupons due Jan. 1,
118 1883, numbered 904, 905, 995, 996, 997, 998, 1179 to 1183, 1193 to 1200, 1261 to 1279, 1409 to 1417, 1443 to 1467, 1570 to 1585, 1963 to 1967, 2023 to 2037, 2051, 2052, 2283 to 2287, 2603, 2604, 2609, 2608.

Rendered Ap'l 19, 1883; amount, 4,581.50.

14. Henry Sanford, New York, coupons due July 1, 1882, numbered 2446, 2443, 2444, 2448, 2449, 2451, 2453, 2454, 2366.

Rendered Ap'l 17, 1883; amount, 616.60.

15. Henry L. Sheldon, New York, coupons due July 1, 1882, numbered 1667 to 1695, 2219 to 2268, 2247. Coupons due January 1, 1883, same number.

Rendered ——; amount, ——.

16. Martha L. Dow, New Hampshire, coupons due July 1, 1882, numbered 226 to 240, 461 to 470, 1318 to 1337, 1341 to 1365, 2578, 2579, 2580, 2592, 2593, 2599, 2606. 2616, 2617, 2633, 2635, 2645, 2646, 2652, 2653, 2660, 2667, 2671, 2672.

Rendered Ap'l 18, 1883; amount, 4,625.25.

17. Jno. L. Farwell, New Hampshire, coupons due July 1, 1882, numbered 857, 984 to 988, 990 to 994, 1170, 1176, 1177, 1178, 1184 to 1192, 1260, 1379, 1380, 1382, 1383, 1386 to 1395, 1400 to 1405, 1485 to 1488, 1490, 1519 to 1541, 1547, 1697, 1725, 1726, 1950, 1951, 1996, 2341, 2342, 2345, 2369, 2370, 1492 to 1501, 1656 to 1660,
119 1698 to 1724, 2016 to 2022, 989, 1381, 1384, 1385, 1396 to 1399, 2038, 2304, 2343, 2344, 2605, 2610, 2614, 2623, 2624, 2639 to 2641, 2643, 2649, 2648, 2650, 2658, 2664, 2673.

Rendered Ap'l 18, 1883; amount 3,424.55.

18. Henry E. Bailey, New Hampshire, coupons due July 1, '82, numbered 1171 to 1175, 2346 to 2365, 1418 to 1442.

Rendered Ap'l 19, 1883; amount, 3,022.32.

19. L. Levy, New York, coupon dated July 1, 1882, numbered 16, 28, 266, 268, 497, 498, 849, 981, 1032, 1060, 1776, 1779, 1780, 2096, 2195, 1587. Coupons due Jan. 1, 1883, same numbers.

Rendered, ——; amount ——.

20. G. T. Bonner & Co., New York, coupons due July 1, 1882, numbered 288, 1468, 1469, 1470, 1471, 1472, 1895, 1897, 1898.

Same numbers of coupons due Jan. 1, 1883.

Rendered Ap'l 17, 1883; amount 616.60.

21. W. G. Wheeler, New York, coupons due July 1, 1882, numbered 83 to 135, 142 to 163, 851 to 864, 883, 885, 887, 901, 902, 903, 1201 to 1208, 1223 to 1236, 1249, 1250, 1302 to 1313, 1947, 1948, 2269.

Rendered Ap'l 19, 1883; amount, 2,725.23.

120 22. F. H. Cossitt, New York, coupons due July 1, 1882, numbered 502 to 600.

Rendered Ap'l 17, 1883; amount, 4,903.89.

—. Charles Moran, New York, coupons due July 1, 1882, numbered 194, 200, 201, 202, 421, 422, 456, 457, 458, 459, 460, 844, 845, 913, 914, 949, 950, 951, 952, 953, 1077, 1098, 1149, 1314, 1315, 1316, 1317, 1368, 1369, 1378, 1487, 1589, 1590, 1591, 1599, 1600, 1601, 1613, 1614, 1615, 1662, 1751, 1880, 1881, 1882, 1883, 1884, 1902, 1903, 1910, 1927, 1928, 1929, 2078, 2147, 2148, 2193, 2321, 2426, 2427, 2428, 2431, 2432, 2433, 2434, 2460, 2461, 2463, 2464, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2480, 2481, 2483, 2533. Coupons due Jan. 1, 1883, same numbers.

Rendered April 11, 1883; amount, 4,867.72.

And on June 11, 1883, as follows:

EQUITABLE LIFE ASSURANCE
v.
MEMPHIS & LITTLE ROCK R. R. CO.

On motion it is ordered that B. C. Brown have leave to withdraw his name as one of the solicitors for the plaintiff in this case, and that the name of John M. Rose be substituted in his place.

121 On July 2, 1883, the following motion by Matthews to strike out was filed:

United States Circuit Court for the Eastern District of Arkansas.
In Equity.

EQUITABLE LIFE ASSURANCE SOCIETY
v.
MEMPHIS & LITTLE ROCK RAILROAD COMPANY, as Reorganized, *et al.*

Comes the defendant, Watson Matthews, and moves the court to strike out the following passages from the original and amended bills herein as impertinent:

1. Part of folio 24, original bill, beginning with the words "Orators further show," ending with the word payment.

2. All of the folios in the original bill numbered 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47.

3. Folios of the amended bill numbered 78, 79, 80, and 81, down to the words "income of said railroad company."

4. Beginning on folio 85 of the amended bill at the words "Orators sub-it," to the words "any one concerned," on folio 87.

5. All of folio 89 of said amended bill

122 6. Beginning with the words "As shown in orators' original bill," on folio 93 of the amended bill, and ending with the words "prevent such injury."

U. M. & G. B. ROSE, *Sol's.*

And on October 6, 1883, as follows:

THE EQUITABLE LIFE ASSURANCE SOCIETY *et al.*
v.
MEMPHIS & LITTLE ROCK RAILROAD COMPANY, as Reorganized.

The motion of defendant, Watson Matthews, to strike out certain passages from the original and amended bills in this cause having

been argued and submitted, and the court, being now well and sufficiently advised in the premises, doth overrule said motion.

On October 8, 1883, the following answer was filed:

In the United States Circuit Court for the Eastern District of Arkansas. In Equity.

123 THE EQUITABLE LIFE ASSURANCE SOCIETY and Others, Plaintiffs,

v.

THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as Reorganized, and Others, Defendants.

The separate answer of the Memphis and Little Rock Railroad Company, as reorganized, to the bill of complaint of the Equitable Life Assurance Society of New York and others, plaintiffs, exhibited against it and others, defendants.

Making all the usual and necessary reservations, the defendant, the Memphis and Little Rock Railroad Company, as reorganized, for answer to the said bill, or so much thereof as it is advised it is material or necessary for it to make answer unto, says that it admits that on May 1, 1877, it executed, sold, and delivered to divers persons its two hundred and fifty several bonds for one thousand dollars each, which said bonds bore interest and matured and became payable, as in the original bill stated.

124 It also admits that to secure and make certain the payment of the principal and interest it did execute and deliver on the first day of May, 1877, its deed, by which it conveyed to the defendants, R. K Dow and Watson Matthews, and to one Wm. S. Pierson, all property then owned or thereafter to be acquired and all its income of every character, class, and description, the words of description used being the same copied in the said original bill.

The defendant further admits that its said deed contained the covenant or provision mentioned in the said original bill upon folio 12 therein, commencing with the words "in case default shall be made" and ending with the words "under the laws of the State of Arkansas."

It also admits that its said deed was duly delivered to the grantees therein named, and that the said deed was duly and properly recorded in all the counties of the State of Arkansas in which

125 the conveyed property and every part thereof was situated, and it further admits the Exhibit A with said bill is a true copy of said deed.

Respondent further admits that after the execution of said deed William S. Pierson, one of the trustees and grantees therein, died, and that no successor to him or his trust therein has been named or appointed.

It also admits that after the maturity of one or more of the installments of said bonds the time of payment thereof was by agreement between the holders of said bonds and this defendant extended for various periods, and also admits that it agreed and covenanted with

the holders of said bonds who consented to said extension that said extension should in no manner impair the validity of the trust deed or the obligation of the defendant to pay accrued interest upon the bonds named. What effect such extension had upon the provisions of said deed which authorized the holders of said
126 bonds to declare the principal sums named in said bonds due upon default of payment of interest respondent submits to the court.

Respondent, further answering, admits that the complainants are the holders of the bonds mentioned in the bill and that said bonds constitute a majority of all the bonds secured by the deed aforesaid.

It also admits that it did make default in payment of interest due upon said bonds on the first day of November, 1882, and that said default continued from that day until the day on which the original bill was filed, and still continues.

And defendant further admits that it made default upon the installment of interest which became due and payable on the first day of May, 1883, and that its default in that behalf still continues.

Further answering, respondent says that, as is hereinafter more specifically stated, on the second day of May, 1877, it exe-
127 cuted its other bonds to the amount of two million six hundred thousand dollars, and secured payment of the same by a mortgage executed on that day, by which it conveyed its same property and income to the same trustees.

It states that since the execution of the said bonds it has exhibited its bill in chancery against the trustees in said last-named mortgage and the holders of the bonds secured thereby, so far as they could be ascertained, in the circuit court of the United States for the southern district of New York, praying that said bonds and mortgage be cancelled, for the reason, as respondent alleges, that they are absolutely void and were illegally issued and in violation of law. Should it be decided in that cause that said bonds are valid and that respondent is liable therefor, it admits that its debts, obligations, and liabilities largely exceed the value of its property of every character.

Further answering, respondent admits that the said two
128 million six hundred thousand dollars of bonds last named were subsequent and subordinate to the bonds held by complainants in this cause and by their co-bondholders.

And it further admits that the mortgage by which the said two million six hundred thousand dollars in bonds were secured was executed and recorded subsequent to the mortgage by which complainants' bonds are secured.

It also admits that after the death of William S. Pierson, who was one of the trustees in this last-named deed executed May 2, 1877, Charles Moran was duly appointed trustee thereof in his stead.

Further answering, respondent admits the rendition by the supreme court of the State of Arkansas of the decree mentioned in the complaint, condemning part of the property conveyed by respondent as aforesaid for payment of a demand held by the State of
129 Arkansas against a former owner of part of the conveyed premises, and foreclosing a mortgage claimed to be held

thereon by the State. It also admits that the said Dow, Matthews, and Moran, acting as trustees of the deed of May 2, 1877, did intervene and pay the amount of the decree so rendered by the supreme court of the State of Arkansas, which with all costs amounted to two hundred and thirty-nine thousand six hundred and seventy-two dollars and seventy-one cents.

Further defendant admits that said Dow, Matthews, and Moran, as trustees of said deed of May 2, 1877, did exhibit their bill in this court against this defendant, praying to be subrogated to the lien of the State of Arkansas, and that they obtained a decree substantially as stated in said amended and original bill.

Further answering, respondent also admits that said R. K. Dow did bring suit upon the law side of this court against this defendant upon a number of coupons cut and taken from said bonds issued subsequent and subordinate to those held by complainants,
130 and that, as stated in the amended bill, he and other holders of coupons taken from said second issue of bonds have obtained judgments against this defendant at law for the amounts thereof. Defendant has examined the schedule giving the names and residences of the parties who have brought said suits and recovered said judgments, and admits that said schedule contains all their names and gives a true statement of the dates of the coupons sued on, the number of the bonds from which they were taken, and the date and amount of each judgment rendered.

It also admits that among those who have brought such suits are R. K. Dow and Charles Moran, two of the trustees of said second or general mortgage, and that said R. K. Dow is also one of the parties to the mortgage by which complainants' bonds are secured.

Upon information and belief respondent also admits that Watson Matthews did refuse to bring suit for the foreclosure of the preference mortgage by which complainants' bonds are secured as in the bill stated.

131 Respondent also admits that it has no property, income, or effects which were not and are not conveyed by the deed of May 1, 1877, for the security of bonds held by complainants and their co-bondholders; and it admits that satisfaction of judgments at law against it only could be had by levy and seizure of the property conveyed for security of complainants' bonds, or by seizure and application of the income of defendant, which is also conveyed for security for complainants' bonds.

Respondent admits that Russell Sage also recovered judgment against this defendant; that the debt upon which he recovered judgment was a floating and unsecured debt of the defendant, and that the property and income of the defendant is subject to no lien of said Sage; and it also admits that in the cause in chancery pending in this court, wherein Russell Sage is complainant and this defendant is defendant, all its income and effects have been taken and are now in possession of this court, by its receiver, and that this court is now operating the railroad of defendant by its receiver.

132 Answering the interrogatories propounded to it in the original bill it answers—

First. It did execute the bonds and deed first in said original bill mentioned, and that it has no property or effects other than such as are by said deed conveyed.

To the second it answers that it did make default in the payment of interest maturing on said bonds on the first day of November, 1882.

To the third it says: It has.

To the fourth it says: It was.

And having fully answered, &c.

B. C. BROWN,
Solicitor for Def't.

In testimony that the foregoing is the answer of the defendant in the above-entitled cause I hereby sign the same as secretary of said company and attach the seal of said company thereto this 8th day of October, 1883.

Attest:

[SEAL.] JOHN W. GOODWIN, *Secretary.*

133 On October 13, 1883, a motion to dismiss was filed by Dow.

In the United States Circuit Court for the Eastern District of Arkansas. In Equity.

THE EQUITABLE LIFE ASSURANCE SOCIETY *et al.*

v.

MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as Reorganized.

Comes said defendant, R. K. Dow, and moves the court to dismiss this suit, because it appears on the face of the bill herein that this court has no jurisdiction of this cause.

U. M. & G. B. ROSE, *Sol's.*

And on Oct. 23, 1883, as follows:

EQUITABLE LIFE ASSURANCE SOCIETY *et als.*
v.
MEMPHIS & LITTLE ROCK RAILROAD COMPANY, as Reorganized, *et al.* } 528.

134 On this day comes R. K. Dow, by U. M. Rose, his solicitor, and also come the complainants by J. M. Rose, their solicitor, and the motion to dismiss the bill of complaint herein is argued; and, the court being well and sufficiently advised in the premises, doth overrule the same.

And it is further ordered that the defendants, Watson Matthews and R. K. Dow, have thirty days from this date to file their answer in this cause, and said complainants file their motion for the appointment of a receiver.

Which motion is as follows:

Motion for the Appointment of a Receiver.

United States Circuit Court for the Eastern District of Arkansas.
In Chancery.

THE EQUITABLE LIFE ASSURANCE SOCIETY *et als.*

v.

THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as Reorganized, *et al.*

135 Come the complainants, by their solicitor, and ask the court that E. K. Sibley, who is now the receiver of the property of the defendant railroad company in the case of Russell Sage *v.* The Memphis and Little Rock Railroad Company, as reorganized, now pending in this court, be appointed receiver in this cause, and that he take charge of the railroad and property and the defendant railroad company and operate the same, and pay the net income of said road into court until the bonds of complainants and their co-bondholders are paid.

J. M. ROSE,
Sol. for Complainants.

On November 7, 1883, the answer of Dow and Matthews was filed.

In the United States Circuit Court for the Eastern District of Arkansas. In Equity.

THE EQUITABLE LIFE ASSURANCE SOCIETY *et al.*, Plaintiffs,

v.

THE MEMPHIS & LITTLE ROCK RAILROAD COMPANY *et al.*, Defendants.

136 Come the said defendants, Dow and Matthews, and saving and reserving unto themselves all manner of advantage to be had or taken of the many errors and insufficienc-es in said bill contained, for answer thereunto they say—

That they admit the issue of bonds and the execution of the mortgages named in said bill; that the mortgages were duly recorded and that copies of them are filed with the bill; that said Pierson has since died, and that said Moran has been appointed trustee in his stead, and that they and said Moran are now acting as trustees under said mortgage. Defendants do not know whether the plaintiffs own any of said bonds or not, and have no information on the subject save what is derived from said bill.

Defendants deny that said railroad company is insolvent and deny that its liabilities exceed the value of its assets; they deny that they have placed themselves in hostility to the other bondholders or to said plaintiffs.

137 They admit the foreclosure proceedings in favor of the State of Arkansas, and that they and said Moran paid off said decree in order to protect the property in their hands as trustees

under the mortgage of May 2, 1877; that they then filed a bill in this court asking that they be subrogated to the rights of the State under its decree of foreclosure, and that the road of the said railroad company might be sold for the repayment of the money paid by them to the State. No bondholder was made a party to said suit. A final decree was rendered in that suit in favor of the plaintiffs therein, subrogating them to the rights of the State under its decree for the amount paid by them to the State, with interest, and against said railroad company for the costs and expenses of the suit, and the railroad as described in the decree in favor of the State was directed to be sold, but subject to the rights of the persons holding bonds secured by said mortgages of May 1st and May 2nd,
138 1877, the plaintiffs therein waiving all claim to priority over them, believing that the property embraced in their decree would be of sufficient value to pay off said decree when sold subject to both of said mortgages. Defendant Dow has sued at law on certain coupons of the bonds of May 2, 1877, owned by him, and has advised some of his friends to do the same thing for their better security, and he and several others have recovered judgments on said coupons in this court against said railroad company, but they have not sued out executions on any of said judgments, nor had they any intention of doing so; but they have severally filed bills, on the equity side of this court, setting up said judgments and asking that the road and other property of the said company may be sold to pay off said judgments, or that a receiver may be appointed to pay them out of the net earnings of the company, but asking that if said property is sold it may be sold subject to the lien of the said mortgages of May 1 and May 2, 1877.

139 As to the interrogatories propounded in said bill defendants answer the first three asked of them in the affirmative.

The fourth has been already answered above.

The 5th they decline to answer, as it asks them to give their opinion as to the effect of a decree which speaks for itself; and as to those asked of said Dow he declines to answer those numbered 1, 2, & 3 because they are impertinent and irrelevant.

To the 4th he says that he knows of no property belonging to said railroad company not embraced in the mortgage of May 1, 1877.

The 5th he has already answered. He has no intention of having any such execution issued.

As to the amendment filed to said bill these defendants admit the bringing of said suit by said railroad company in the United States circuit court for the southern district of New York;
140 said suit is still pending. Defendant's also admit that in the suit brought by said trustees for subrogation to the rights of the State of Arkansas said railroad company by its answer claimed that the bonds secured by the mortgage of May 2, 1877, were void for want of consideration, and that it filed a cross-bill in the same suit, setting up the same matter and praying for a cancellation of said last-named mortgage, and that in the final decree in that case the prayer of the original bill was granted, and said cross-bill was

dismissed for want of equity; from which decree said railroad company appealed.

As to the allegations in said amendment as to the suit brought by Russell Sage these defendants admit them.

It is not true, as stated in said amendment, that these defendants have refused to bring a suit to foreclose said mortgage of May 1, 1877. On the contrary, they have brought a suit for that purpose, which is now pending on the chancery side of this court.

And, having fully answered, these defendants — that they may be hence dismissed with their costs.

141 And on Dec. 3, 1883, motion to consolidate and replication were filed.

U. S. Circuit Court, E. Dist. Ark. In Chancery.

THE EQUITABLE LIFE ASSURANCE SOCIETY *et al.*

v.

THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as Reorganized, R. K. DOW, and WATSON MATTHEWS.

Come said defendants Dow and Matthews and move that this cause be consolidated with that of R. K. Dow, Watson Matthews, and Charles Moran against said railroad company, No. 543, on the chancery docket now pending in this court.

U. M. & G. B. ROSE, *Sol's.*

In the Circuit Court of the United States, Eastern District of Arkansas.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF NEW YORK *et al.*, Compl't,

vs.

142 THE MEMPHIS AND LITTLE ROCK R. R. CO. *et al.*, Def'ts.

The replication of the Equitable Life Assurance Society *et al.*, complainants, to the answer of R. K. Dow and Watson Matthews, defendants.

These repliants, saving and reserving unto themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto and not herein and hereby well and sufficiently confessed or avoided, traversed or denied, is true.

143 All which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

J. M. ROSE,
Sol. for Pl'ffs.

On Dec. 19, 1883, as follows:

EQUITABLE LIFE ASSURANCE SOCIETY
v.
MEMPHIS & LITTLE ROCK R. R. CO.

Comes the complainant by J. M. Rose, Esq., its solicitor, and come the defendants by U. M. & G. B. Rose, Esqs., their solicitors, and the court being being now well and sufficiently advised of the matters arising on defendants' motion to consolidate this cause with that of R. K. Dow and Watson Matthews against said railroad Co., No. 543, doth consider that the same be overruled.

On March 20, 1884, a motion to consolidate was filed.

144 In the United States Circuit Court for the Eastern District of Arkansas. In Equity.

THE EQUITABLE LIFE ASSURANCE SOCIETY, Plaintiff,
v.
MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as Reorganized, Defendants.

Come said plaintiff and show the court that this case and that of R. K. Dow, Watson Matthews, and Charles Moran against the same defendants, now pending in this court on the same side of the docket, involves the same controversy and no other. It therefore prays that said two causes may be consolidated for the purpose of making one decree in both.

March 20, 1884.

U. M. & G. B. ROSE,
Solicitors.

And on April 4, 1884, as follows:

145 EQUITABLE LIFE ASSURANCE SOCIETY *et al.*
v.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, R. K. DOW, and WATSON MATTHEWS. } 528.

On this day came said plaintiffs by J. M. Rose, their solicitor, and also came the defendants, Dow and Matthews, by U. M. & G. B. Rose, their solicitors, and also came the said defendant, The Memphis and Little Rock Railroad Company, as reorganized, by B. C. Brown, its solicitor, and this cause is submitted on final hearing; and it now appearing to the court that there is no evidence to sustain the charges made in the bill herein against said Dow and Matthews, it is now ordered and considered that said bill be dismissed as to them, and the said Dow and Matthews recover their costs herein.

EQUITABLE LIFE ASSURANCE SOCIETY *et al.*
v.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY *et al.* } 528.

146 On this day came the plaintiffs by J. W. Rose, their solicitor, and also came R. K. Dow and Watson Matthews, and the motion of said Dow and Matthews to have this suit consolidated with No. 543 on the chancery docket, wherein said Dow and Matthews are plaintiffs and said Railroad Company is defendant, having been duly considered by the court, it is now ordered that said two suits be, and they are hereby, consolidated for the purpose of having one final decree in both suits, which final decree shall be rendered in the case of said Dow and Matthews against the railroad company.

And on May 5, 1884, as follows:

R. K. Dow *et al.*
v.
MEMPHIS & LITTLE ROCK RAILROAD CO., &c.

On this day came the Equitable Life Assurance Society of New York, H. G. Marquand, Alanson Trask, D. W. McWilliams, and Virginia M. F. Monroe, by J. M. Rose, Esq., their solicitor, and
147 pray an appeal to the Supreme Court of the United States from the decree of this court dismissing their bill against R. K. Dow and Watson Matthews and consolidating the same with the bill in this cause and ordering the property sold subject to the lien of the general mortgage and of the decree of this court subrogating Dow and Matthews to the rights of the State of Arkansas, which appeal is granted.

The following deposition was filed in the case:

In the United States Circuit Court for the Eastern District of Arkansas.

THE EQUITABLE LIFE ASSURANCE SOCIETY *et al.*
vs.
THE MEMPHIS & LITTLE ROCK RAILROAD COMPANY, as Reorganized, *et als.*

STATE OF NEW YORK,
Southern District of New York, County of New York, } *ss:*

148 I hereby certify that on this 15th day of January, 1884, before me, Herbert E. Dickson, a notary public in and for the county of New York and State of New York, at my office, No. 195 Broadway, in the city of New York, county of New York, and State of New York, personally appeared before me, pursuant to the agreement and notice hereto annexed, between the hours of 9 a. m. and 4 p. m., John F. Dillon, and Melville Egleston, Esquire, appeared as counsel for plaintiff- and John M. Bowers, Esquire, appeared as

counsel for certain defendants; and the said John F. Dillon, being by me first duly cautioned and sworn to testify to the whole truth and being carefully examined, deposed and said as appears by the deposition hereto annexed.

And I further certify that the deposition was then and there reduced to writing by me, and was, after it had been reduced to writing, subscribed by the witness, and the same has been retained by me for the purpose of sealing up and directing the same to the clerk of the court, as required by law.

149 And I further certify that the reason why said deposition was taken was that the said witness resides at New York city, more than one hundred miles from the place where this cause is to be tried.

And I do further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

And I do further certify that the fee for taking said deposition, $—, has been paid to me by the —, and the same is just and reasonable.

In testimony whereof I have hereunto set my hand and official seal at the city of New York, in the county of New York and State of New York, this 15th day of January, 1884.

[SEAL.] HERBERT E. DICKSON,
Notary Public, City and County of N. Y.

In the United States Circuit Court, Eastern District of Arkansas.

THE EQUITABLE LIFE ASSURANCE SOCIETY *et al.*

vs.

150 THE MEMPHIS AND LITTLE ROCK RAILROAD CO., as Reorganized, *et al.*

STATE OF NEW YORK,
Southern District of New York, County of New York, } *ss:*

JOHN F. DILLON, a witness called on behalf of the plaintiff- herein and residing at New York city, more than one hundred miles from the place where this cause is to be tried, being duly cautioned and sworn to tell the whole truth and being carefully examined, deposes and says as follows:

Direct examination by MELVILLE EGLESTON:

Q. State your name, age, residence, and occupation.

A. John F. Dillon; lawful age; residence, New York; occupation, attorney-at-law.

Q. State whether you know Watson Matthews; and, if so, how long have you known him?

A. I know Watson Matthews, and have known him for a year or more.

Q. State what official position, if any, he occupies in re-

151 gard to the mortgage executed by the Memphis and Little Rock Railroad Company, as reorganized, dated May 1, 1877, generally known as the preference mortgage.

Objected to on the part of the defendant- on the ground that reference to the instrument itself will show what position Watson Matthews occupied.

A. My understanding is that he is one of the trustees therein, and I had an interview with him based upon that understanding.

Q. State whether you had any conversation with him in regard to foreclosing that mortgage and restraining Dow from prosecuting suits against said company; and, if so, when and where such conversation was had, and state fully what it was.

Objected to on the part of the defendant- as immaterial, irrelevant, and incompetent.

A. I was requested by Governor John C. Brown or B. C. Brown—
I do not recollect which—to see Watson Matthews. I sent
152 for him and had an interview with him on the 11th day of
May, 1883. The result of that interview I embodied in a dispatch to John C. Brown of that date, written immediately after the interview, which dispatch, so far as relates to this matter, reads as follows:

"NEW YORK, *May 11th* (1883).

"John C. Brown, St. Louis:

"Have seen Watson Matthews. He says he has given Dow power of attorney and signed certain papers in suit here, so that he cannot file a bill against Dow and others for waste, and that the above may be taken and alleged as his refusal to do so."

I had such a conversation and that was the result of what he said to me and is correctly embodied in the dispatch which I have read, copied above from my letter-press copy; I have not the original.

Mr. BOWERS: I move to strike out those portions of the answer
wherein witness states how the conversation was brought
153 about, whether at the request of Mr. Brown or of any other
person, and to strike out the contents of the dispatch offered in evidence by this answer. I object to the portions of the answer hereinbefore particularly referred to, and I object — the entire answer as irrelevant, incompetent, and immaterial and as having mixed verbal conversation with copies of documents, the originals of which are not produced, in such a manner as to prevent my properly separating the different parts of the answer and properly stating the objections to the court, which I would otherwise be entitled to make. For these reasons I object to it as to form in whole and to each and every part thereof.

Cross-examination:

By Mr. BOWERS: Where was this conversation held?

A. In an adjoining room, 195 Broadway.

X Q. How did Mr. Matthews happen to be there?

154 A. I think some one in the office dropped him a note to call; that is my recollection.

X Q. What did you request him to do?

A. To bring a suit against Dow and others as stated in the dispatch. Whatever is stated in that dispatch is true. It was written at the time.

X Q. Was that before the commencement of this action?

A. I do not know. The dispatch was sent the same day, the 11th of May.

X Q. Did you ever ask Mr. Dow to bring any such suit?

A. No, sir.

X Q. Do you know Mr. Dow?

A. Yes, sir.

X Q. Do you know whether he has been in the city during the past year?

A. Yes, sir; I have seen — once or twice here at this office. I have no doubt he has been.

JOHN F. DILLON.

Subscribed and sworn to before me this 15th day of January, A. D. 1884.

[SEAL.] HERBERT E. DICKSON,
Notary Public, City and County New York.

155 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office.

In witness whereof I have hereunto set my hand and the seal of said court this first (1st) day of August, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and ninth.

[The Seal of the Circuit Court, Arkansas District, U. S. A.]

RALPH L. GOODRICH, *Clerk*,
By W. P. FEILD, *D. C.*

Endorsed on cover: E. Arkansas C. C. U. S. No. 115. The Memphis & Little Rock Railroad Company (as reorganized), appellant, *vs.* Robert K. Dow and Watson Matthews, trustees. Filed 16th October, 1884. No. 164. Robert K. Dow and Watson Matthews, trustees, appellants, *vs.* The Memphis & Little Rock Railroad Company (as reorganized). Filed 30th October, 1884.